

State of South Dakota

SEVENTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2000

742D0693

SENATE BILL NO. 192

Introduced by: Senators Everist, Bogue, Duxbury, Munson (David), and Whiting and
Representatives Hunt, Broderick, Earley, Michels, Volesky, and Wilson

1 FOR AN ACT ENTITLED, An Act to reenact the revised secured transactions article of the
2 Uniform Commercial Code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 9-101. This article may be cited as Uniform Commercial Code—Secured Transactions.

5 Section 9-102. (a) In this article:

6 (1) "Accession" means goods that are physically united with other goods in such a
7 manner that the identity of the original goods is not lost.

8 (2) "Account," except as used in "account for," means a right to payment of a monetary
9 obligation, whether or not earned by performance, (i) for property that has been or
10 is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services
11 rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv)
12 for a secondary obligation incurred or to be incurred, (v) for energy provided or to
13 be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii)
14 arising out of the use of a credit or charge card or information contained on or for use
15 with the card, or (viii) as winnings in a lottery or other game of chance operated or
16 sponsored by a State, governmental unit of a State, or person licensed or authorized

1 to operate the game by a State or governmental unit of a State. The term includes
2 health-care-insurance receivables. The term does not include (i) rights to payment
3 evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit
4 accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or
5 (vi) rights to payment for money or funds advanced or sold, other than rights arising
6 out of the use of a credit or charge card or information contained on or for use with
7 the card.

8 (3) "Account debtor" means a person obligated on an account, chattel paper, or general
9 intangible. The term does not include persons obligated to pay a negotiable
10 instrument, even if the instrument constitutes part of chattel paper.

11 (4) "Accounting," except as used in "accounting for," means a record:

12 (A) authenticated by a secured party;

13 (B) indicating the aggregate unpaid secured obligations as of a date not more than
14 35 days earlier or 35 days later than the date of the record; and

15 (C) identifying the components of the obligations in reasonable detail.

16 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

17 (A) which secures payment or performance of an obligation for:

18 (i) goods or services furnished in connection with a debtor's farming
19 operation; or

20 (ii) rent on real property leased by a debtor in connection with its farming
21 operation;

22 (B) which is created by statute in favor of a person that:

23 (i) in the ordinary course of its business furnished goods or services to a
24 debtor in connection with a debtor's farming operation; or

25 (ii) leased real property to a debtor in connection with the debtor's farming

1 operation; and

2 (C) whose effectiveness does not depend on the person's possession of the
3 personal property.

4 (6) "As-extracted collateral" means:

5 (A) oil, gas, or other minerals that are subject to a security interest that:

6 (i) is created by a debtor having an interest in the minerals before
7 extraction; and

8 (ii) attaches to the minerals as extracted; or

9 (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
10 minerals in which the debtor had an interest before extraction.

11 (7) "Authenticate" means:

12 (A) to sign; or

13 (B) to execute or otherwise adopt a symbol, or encrypt or similarly process a
14 record in whole or in part, with the present intent of the authenticating person
15 to identify the person and adopt or accept a record.

16 (8) "Bank" means an organization that is engaged in the business of banking. The term
17 includes savings banks, savings and loan associations, credit unions, and trust
18 companies.

19 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the
20 like.

21 (10) "Certificate of title" means a certificate of title with respect to which a statute
22 provides for the security interest in question to be indicated on the certificate as a
23 condition or result of the security interest's obtaining priority over the rights of a lien
24 creditor with respect to the collateral.

25 (11) "Chattel paper" means a record or records that evidence both a monetary obligation

1 and a security interest in specific goods, a security interest in specific goods and
2 software used in the goods, a security interest in specific goods and license of
3 software used in the goods, a lease of specific goods, or a lease of specific goods and
4 license of software used in the goods. In this paragraph, "monetary obligation" means
5 a monetary obligation secured by the goods or owed under a lease of the goods and
6 includes a monetary obligation with respect to software used in the goods. The term
7 does not include (i) charters or other contracts involving the use or hire of a vessel or
8 (ii) records that evidence a right to payment arising out of the use of a credit or
9 charge card or information contained on or for use with the card. If a transaction is
10 evidenced by records that include an instrument or series of instruments, the group
11 of records taken together constitutes chattel paper.

12 (12) "Collateral" means the property subject to a security interest or agricultural lien. The
13 term includes:

14 (A) proceeds to which a security interest attaches;

15 (B) accounts, chattel paper, payment intangibles, and promissory notes that have
16 been sold; and

17 (C) goods that are the subject of a consignment.

18 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

19 (A) the claimant is an organization; or

20 (B) the claimant is an individual and the claim:

21 (i) arose in the course of the claimant's business or profession; and

22 (ii) does not include damages arising out of personal injury to or the death
23 of an individual.

24 (14) "Commodity account" means an account maintained by a commodity intermediary in
25 which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

1 (A) the merchant:

2 (i) deals in goods of that kind under a name other than the name of the
3 person making delivery;

4 (ii) is not an auctioneer; and

5 (iii) is not generally known by its creditors to be substantially engaged in
6 selling the goods of others;

7 (B) with respect to each delivery, the aggregate value of the goods is \$1,000 or
8 more at the time of delivery;

9 (C) the goods are not consumer goods immediately before delivery; and

10 (D) the transaction does not create a security interest that secures an obligation.

11 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.

12 (22) "Consumer debtor" means a debtor in a consumer transaction.

13 (23) "Consumer goods" means goods that are used or bought for use primarily for
14 personal, family, or household purposes.

15 (24) Consumer-goods transaction means a consumer transaction in which:

16 (A) an individual incurs an obligation primarily for personal, family, or household
17 purposes; and

18 (B) a security interest in consumer goods secures the obligation.

19 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
20 obligation as part of a transaction entered into primarily for personal, family, or
21 household purposes.

22 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
23 obligation primarily for personal, family, or household purposes, (ii) a security interest
24 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
25 family, or household purposes. The term includes consumer-goods transactions.

1 (27) "Continuation statement" means an amendment of a financing statement which:

2 (A) identifies, by its file number, the initial financing statement to which it relates;

3 and

4 (B) indicates that it is a continuation statement for, or that it is filed to continue the

5 effectiveness of, the identified financing statement.

6 (28) "Debtor" means:

7 (A) a person having an interest, other than a security interest or other lien, in the

8 collateral, whether or not the person is an obligor;

9 (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes;

10 or

11 (C) a consignee.

12 (29) "Deposit account" means a demand, time, savings, passbook, or similar account

13 maintained with a bank. The term does not include investment property or accounts

14 evidenced by an instrument.

15 (30) "Document" means a document of title or a receipt of the type described in Section

16 7-201(2).

17 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records

18 consisting of information stored in an electronic medium.

19 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The

20 term includes mortgages and other liens on real property.

21 (33) "Equipment" means goods other than inventory, farm products, or consumer goods.

22 (34) "Farm products" means goods, other than standing timber, with respect to which the

23 debtor is engaged in a farming operation and which are:

24 (A) crops grown, growing, or to be grown, including:

25 (i) crops produced on trees, vines, and bushes; and

- 1 (ii) aquatic goods produced in aquacultural operations;
- 2 (B) livestock, born or unborn, including aquatic goods produced in aquacultural
- 3 operations;
- 4 (C) supplies used or produced in a farming operation; or
- 5 (D) products of crops or livestock in their unmanufactured states.
- 6 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any
- 7 other farming, livestock, or aquacultural operation.
- 8 (36) "File number" means the number assigned to an initial financing statement pursuant
- 9 to Section 9-519(a).
- 10 (37) "Filing office" means an office designated in Section 9-501 as the place to file a
- 11 financing statement.
- 12 (38) "Filing-office rule" means a rule adopted pursuant to Section 9-526.
- 13 (39) "Financing statement" means a record or records composed of an initial financing
- 14 statement and any filed record relating to the initial financing statement.
- 15 (40) "Fixture filing" means the filing of a financing statement covering goods that are or
- 16 are to become fixtures and satisfying Section 9-502(a) and (b). The term includes the
- 17 filing of a financing statement covering goods of a transmitting utility which are or are
- 18 to become fixtures.
- 19 (41) "Fixtures" means goods that have become so related to particular real property that
- 20 an interest in them arises under real property law.
- 21 (42) "General intangible" means any personal property, including things in action, other
- 22 than accounts, chattel paper, commercial tort claims, deposit accounts, documents,
- 23 goods, instruments, investment property, letter-of-credit rights, letters of credit,
- 24 money, and oil, gas, or other minerals before extraction. The term includes payment
- 25 intangibles and software.

1 (43) "Good faith" means honesty in fact and the observance of reasonable commercial
2 standards of fair dealing.

3 (44) "Goods" means all things that are movable when a security interest attaches. The term
4 includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
5 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown,
6 growing, or to be grown, even if the crops are produced on trees, vines, or bushes,
7 and (v) manufactured homes. The term also includes a computer program embedded
8 in goods and any supporting information provided in connection with a transaction
9 relating to the program if (i) the program is associated with the goods in such a
10 manner that it customarily is considered part of the goods, or (ii) by becoming the
11 owner of the goods, a person acquires a right to use the program in connection with
12 the goods. The term does not include a computer program embedded in goods that
13 consist solely of the medium in which the program is embedded. The term also does
14 not include accounts, chattel paper, commercial tort claims, deposit accounts,
15 documents, general intangibles, instruments, investment property, letter-of-credit
16 rights, letters of credit, money, or oil, gas, or other minerals before extraction.

17 (45) "Governmental unit" means a subdivision, agency, department, county, parish,
18 municipality, or other unit of the government of the United States, a State, or a
19 foreign country. The term includes an organization having a separate corporate
20 existence if the organization is eligible to issue debt on which interest is exempt from
21 income taxation under the laws of the United States.

22 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of
23 insurance which is a right to payment of a monetary obligation for health-care goods
24 or services provided.

25 (47) "Instrument" means a negotiable instrument or any other writing that evidences a right

1 to the payment of a monetary obligation, is not itself a security agreement or lease,
2 and is of a type that in ordinary course of business is transferred by delivery with any
3 necessary indorsement or assignment. The term does not include (i) investment
4 property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising
5 out of the use of a credit or charge card or information contained on or for use with
6 the card.

7 (48) "Inventory" means goods, other than farm products, which:

8 (A) are leased by a person as lessor;

9 (B) are held by a person for sale or lease or to be furnished under a contract of
10 service;

11 (C) are furnished by a person under a contract of service; or

12 (D) consist of raw materials, work in process, or materials used or consumed in a
13 business.

14 (49) "Investment property" means a security, whether certificated or uncertificated,
15 security entitlement, securities account, commodity contract, or commodity account.

16 (50) "Jurisdiction of organization" with respect to a registered organization, means the
17 jurisdiction under whose law the organization is organized.

18 (51) "Letter-of-credit right" means a right to payment or performance under a letter of
19 credit, whether or not the beneficiary has demanded or is at the time entitled to
20 demand payment or performance. The term does not include the right of a beneficiary
21 to demand payment or performance under a letter of credit.

22 (52) "Lien creditor" means:

23 (A) a creditor that has acquired a lien on the property involved by attachment, levy,
24 or the like;

25 (B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under Section 9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

1 (58) "Noncash proceeds" means proceeds other than cash proceeds.

2 (59) "Obligor" means a person that, with respect to an obligation secured by a security
3 interest in or an agricultural lien on the collateral, (i) owes payment or other
4 performance of the obligation, (ii) has provided property other than the collateral to
5 secure payment or other performance of the obligation, or (iii) is otherwise
6 accountable in whole or in part for payment or other performance of the obligation.

7 The term does not include issuers or nominated persons under a letter of credit.

8 (60) "Original debtor," except as used in Section 9-310(c), means a person that, as debtor,
9 entered into a security agreement to which a new debtor has become bound under
10 Section 9-203(d).

11 (61) "Payment intangible" means a general intangible under which the account debtor's
12 principal obligation is a monetary obligation.

13 (62) "Person related to," with respect to an individual, means:

14 (A) the spouse of the individual;

15 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;

16 (C) an ancestor or lineal descendant of the individual or the individual's spouse; or

17 (D) any other relative, by blood or marriage, of the individual or the individual's
18 spouse who shares the same home with the individual.

19 (63) "Person related to," with respect to an organization, means:

20 (A) a person directly or indirectly controlling, controlled by, or under common
21 control with the organization;

22 (B) an officer or director of, or a person performing similar functions with respect
23 to, the organization;

24 (C) an officer or director of, or a person performing similar functions with respect
25 to, a person described in subparagraph (A);

1 (D) the spouse of an individual described in subparagraph (A), (B), or (C); or

2 (E) an individual who is related by blood or marriage to an individual described in
3 subparagraph (A), (B), (C), or (D) and shares the same home with the
4 individual.

5 (64) "Proceeds," except as used in Section 9-609(b), means the following property:

6 (A) whatever is acquired upon the sale, lease, license, exchange, or other
7 disposition of collateral;

8 (B) whatever is collected on, or distributed on account of, collateral;

9 (C) rights arising out of collateral;

10 (D) to the extent of the value of collateral, claims arising out of the loss,
11 nonconformity, or interference with the use of, defects or infringement of rights
12 in, or damage to, the collateral; or

13 (E) to the extent of the value of collateral and to the extent payable to the debtor
14 or the secured party, insurance payable by reason of the loss or nonconformity
15 of, defects or infringement of rights in, or damage to, the collateral.

16 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary
17 obligation, does not evidence an order to pay, and does not contain an
18 acknowledgment by a bank that the bank has received for deposit a sum of money or
19 funds.

20 (66) "Proposal" means a record authenticated by a secured party which includes the terms
21 on which the secured party is willing to accept collateral in full or partial satisfaction
22 of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

23 (67) "Public-finance transaction" means a secured transaction in connection with which:

24 (A) debt securities are issued;

25 (B) all or a portion of the securities issued have an initial stated maturity of at least

1 20 years; and

2 (C) the debtor, obligor, secured party, account debtor or other person obligated on
3 collateral, assignor or assignee of a secured obligation, or assignor or assignee
4 of a security interest is a State or a governmental unit of a State.

5 (68) "Pursuant to commitment," with respect to an advance made or other value given by
6 a secured party, means pursuant to the secured party's obligation, whether or not a
7 subsequent event of default or other event not within the secured party's control has
8 relieved or may relieve the secured party from its obligation.

9 (69) "Record," except as used in "for record," "of record," "record or legal title," and
10 "record owner," means information that is inscribed on a tangible medium or which
11 is stored in an electronic or other medium and is retrievable in perceivable form.

12 (70) "Registered organization" means an organization organized solely under the law of
13 a single State or the United States and as to which the State or the United States must
14 maintain a public record showing the organization to have been organized.

15 (71) "Secondary obligor" means an obligor to the extent that:

16 (A) the obligor's obligation is secondary; or

17 (B) the obligor has a right of recourse with respect to an obligation secured by
18 collateral against the debtor, another obligor, or property of either.

19 (72) "Secured party" means:

20 (A) a person in whose favor a security interest is created or provided for under a
21 security agreement, whether or not any obligation to be secured is outstanding;

22 (B) a person that holds an agricultural lien;

23 (C) a consignor;

24 (D) a person to which accounts, chattel paper, payment intangibles, or promissory
25 notes have been sold;

1 (E) a trustee, indenture trustee, agent, collateral agent, or other representative in
2 whose favor a security interest or agricultural lien is created or provided for;
3 or

4 (F) a person that holds a security interest arising under Section 2-401, 2-505,
5 2-711(3), 2A-508(5), 4-210, or 5-118.

6 (73) "Security agreement" means an agreement that creates or provides for a security
7 interest.

8 (74) "Send," in connection with a record or notification, means:

9 (A) to deposit in the mail, deliver for transmission, or transmit by any other usual
10 means of communication, with postage or cost of transmission provided for,
11 addressed to any address reasonable under the circumstances; or

12 (B) to cause the record or notification to be received within the time that it would
13 have been received if properly sent under subparagraph (A).

14 (75) "Software" means a computer program and any supporting information provided in
15 connection with a transaction relating to the program. The term does not include a
16 computer program that is included in the definition of goods.

17 (76) "State" means a State of the United States, the District of Columbia, Puerto Rico, the
18 United States Virgin Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States.

20 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that
21 supports the payment or performance of an account, chattel paper, a document, a
22 general intangible, an instrument, or investment property.

23 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records
24 consisting of information that is inscribed on a tangible medium.

25 (79) "Termination statement" means an amendment of a financing statement which:

- 1 (A) identifies, by its file number, the initial financing statement to which it relates;
2 and
3 (B) indicates either that it is a termination statement or that the identified financing
4 statement is no longer effective.

5 (80) "Transmitting utility" means a person primarily engaged in the business of:

- 6 (A) operating a railroad, subway, street railway, or trolley bus;
7 (B) transmitting communications electrically, electromagnetically, or by light;
8 (C) transmitting goods by pipeline or sewer; or
9 (D) transmitting or producing and transmitting electricity, steam, gas, or water.

10 (b) The following definitions in other articles apply to this article:

11	"Applicant"	Section 5-102.
12	"Beneficiary"	Section 5-102.
13	"Broker"	Section 8-102.
14	"Certificated security"	Section 8-102.
15	"Check"	Section 3-104.
16	"Clearing corporation"	Section 8-102.
17	"Contract for sale"	Section 2-106.
18	"Customer"	Section 4-104.
19	"Entitlement holder"	Section 8-102.
20	"Financial asset"	Section 8-102.
21	"Holder in due course"	Section 3-302.
22	"Issuer" (with respect to a letter	
23	of credit or letter-of-credit right)	Section 5-102.
24	"Issuer" (with respect to a security)	Section 8-201.
25	"Lease"	Section 2A-103.
26	"Lease agreement"	Section 2A-103.
27	"Lease contract"	Section 2A-103.

1	"Leasehold interest"	Section 2A-103.
2	"Lessee"	Section 2A-103.
3	"Lessee in ordinary course of business"	Section 2A-103.
4	"Lessor"	Section 2A-103.
5	"Lessor's residual interest"	Section 2A-103.
6	"Letter of credit"	Section 5-102.
7	"Merchant"	Section 2-104.
8	"Negotiable instrument"	Section 3-104.
9	"Nominated person"	Section 5-102.
10	"Note"	Section 3-104.
11	"Proceeds of a letter of credit"	Section 5-114.
12	"Prove"	Section 3-103.
13	"Sale"	Section 2-106.
14	"Securities account"	Section 8-501.
15	"Securities intermediary"	Section 8-102.
16	"Security"	Section 8-102.
17	"Security certificate"	Section 8-102.
18	"Security entitlement"	Section 8-102.
19	"Uncertificated security"	Section 8-102.
20		

21 (c) Article 1 contains general definitions and principles of construction and interpretation
22 applicable throughout this article.

23 Section 9-103. (a) In this section:

- 24 (1) "purchase-money collateral" means goods or software that secures a purchase-money
25 obligation incurred with respect to that collateral; and
- 26 (2) "purchase-money obligation" means an obligation of an obligor incurred as all or part
27 of the price of the collateral or for value given to enable the debtor to acquire rights
28 in or the use of the collateral if the value is in fact so used.

1 (b) A security interest in goods is a purchase-money security interest:

2 (1) to the extent that the goods are purchase-money collateral with respect to that
3 security interest;

4 (2) if the security interest is in inventory that is or was purchase-money collateral, also
5 to the extent that the security interest secures a purchase-money obligation incurred
6 with respect to other inventory in which the secured party holds or held a purchase-
7 money security interest; and

8 (3) also to the extent that the security interest secures a purchase-money obligation
9 incurred with respect to software in which the secured party holds or held a purchase-
10 money security interest.

11 (c) A security interest in software is a purchase-money security interest to the extent that the
12 security interest also secures a purchase-money obligation incurred with respect to goods in
13 which the secured party holds or held a purchase-money security interest if:

14 (1) the debtor acquired its interest in the software in an integrated transaction in which
15 it acquired an interest in the goods; and

16 (2) the debtor acquired its interest in the software for the principal purpose of using the
17 software in the goods.

18 (d) The security interest of a consignor in goods that are the subject of a consignment is a
19 purchase-money security interest in inventory.

20 (e) If the extent to which a security interest is a purchase-money security interest depends
21 on the application of a payment to a particular obligation, the payment must be applied:

22 (1) in accordance with any reasonable method of application to which the parties agree;

23 (2) in the absence of the parties' agreement to a reasonable method, in accordance with
24 any intention of the obligor manifested at or before the time of payment; or

25 (3) in the absence of an agreement to a reasonable method and a timely manifestation of

1 the obligor's intention, in the following order:

2 (A) to obligations that are not secured; and

3 (B) if more than one obligation is secured, to obligations secured by purchase-
4 money security interests in the order in which those obligations were incurred.

5 (f) A purchase-money security interest does not lose its status as such, even if:

6 (1) the purchase-money collateral also secures an obligation that is not a purchase-money
7 obligation;

8 (2) collateral that is not purchase-money collateral also secures the purchase-money
9 obligation; or

10 (3) the purchase-money obligation has been renewed, refinanced, consolidated, or
11 restructured.

12 (g) A secured party claiming a purchase-money security interest has the burden of
13 establishing the extent to which the security interest is a purchase-money security interest.

14 Section 9-104. (a) A secured party has control of a deposit account if:

15 (1) the secured party is the bank with which the deposit account is maintained;

16 (2) the debtor, secured party, and bank have agreed in an authenticated record that the
17 bank will comply with instructions originated by the secured party directing
18 disposition of the funds in the deposit account without further consent by the debtor;
19 or

20 (3) the secured party becomes the bank's customer with respect to the deposit account.

21 (b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the
22 right to direct the disposition of funds from the deposit account.

23 Section 9-105. A secured party has control of electronic chattel paper if the record or records
24 comprising the chattel paper are created, stored, and assigned in such a manner that:

25 (1) a single authoritative copy of the record or records exists which is unique, identifiable

1 and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

2 (2) the authoritative copy identifies the secured party as the assignee of the record or
3 records;

4 (3) the authoritative copy is communicated to and maintained by the secured party or its
5 designated custodian;

6 (4) copies or revisions that add or change an identified assignee of the authoritative copy
7 can be made only with the participation of the secured party;

8 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as
9 a copy that is not the authoritative copy; and

10 (6) any revision of the authoritative copy is readily identifiable as an authorized or
11 unauthorized revision.

12 Section 9-106. (a) A person has control of a certificated security, uncertificated security, or
13 security entitlement as provided in Section 8-106.

14 (b) A secured party has control of a commodity contract if:

15 (1) the secured party is the commodity intermediary with which the commodity contract
16 is carried; or

17 (2) the commodity customer, secured party, and commodity intermediary have agreed
18 that the commodity intermediary will apply any value distributed on account of the
19 commodity contract as directed by the secured party without further consent by the
20 commodity customer.

21 (c) A secured party having control of all security entitlements or commodity contracts carried
22 in a securities account or commodity account has control over the securities account or
23 commodity account.

24 Section 9-107. A secured party has control of a letter-of-credit right to the extent of any right
25 to payment or performance by the issuer or any nominated person if the issuer or nominated

1 person has consented to an assignment of proceeds of the letter of credit under Section 5-114(c)
2 or otherwise applicable law or practice.

3 Section 9-108. (a) Except as otherwise provided in subsections (c), (d), and (e), a description
4 of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies
5 what is described.

6 (b) Except as otherwise provided in subsection (d), a description of collateral reasonably
7 identifies the collateral if it identifies the collateral by:

8 (1) specific listing;

9 (2) category;

10 (3) except as otherwise provided in subsection (e), a type of collateral defined in the
11 Uniform Commercial Code;

12 (4) quantity;

13 (5) computational or allocational formula or procedure; or

14 (6) except as otherwise provided in subsection (c), any other method, if the identity of the
15 collateral is objectively determinable.

16 (c) A description of collateral as "all the debtor's assets" or "all the debtor's personal
17 property" or using words of similar import does not reasonably identify the collateral.

18 (d) Except as otherwise provided in subsection (e), a description of a security entitlement,
19 securities account, or commodity account is sufficient if it describes:

20 (1) the collateral by those terms or as investment property; or

21 (2) the underlying financial asset or commodity contract.

22 (e) A description only by type of collateral defined in the Uniform Commercial Code is an
23 insufficient description of:

24 (1) a commercial tort claim; or

25 (2) in a consumer transaction, consumer goods, a security entitlement, a securities

1 account, or a commodity account.

2 Section 9-109. (a) Except as otherwise provided in subsections (c) and (d), this article applies
3 to:

4 (1) a transaction, regardless of its form, that creates a security interest in personal
5 property or fixtures by contract;

6 (2) an agricultural lien;

7 (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

8 (4) a consignment;

9 (5) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), as
10 provided in Section 9-110; and

11 (6) a security interest arising under Section 4-210 or 5-118.

12 (b) The application of this article to a security interest in a secured obligation is not affected
13 by the fact that the obligation is itself secured by a transaction or interest to which this article
14 does not apply.

15 (c) This article does not apply to the extent that:

16 (1) a statute, regulation, or treaty of the United States preempts this article;

17 (2) another statute of this State expressly governs the creation, perfection, priority, or
18 enforcement of a security interest created by this State or a governmental unit of this
19 State;

20 (3) a statute of another State, a foreign country, or a governmental unit of another State
21 or a foreign country, other than a statute generally applicable to security interests,
22 expressly governs creation, perfection, priority, or enforcement of a security interest
23 created by the State, country, or governmental unit; or

24 (4) the rights of a transferee beneficiary or nominated person under a letter of credit are
25 independent and superior under Section 5-114.

(d) This article does not apply to:

- (1) a landlord's lien, other than an agricultural lien;
- (2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9-333 applies with respect to priority of the lien;
- (3) an assignment of a claim for wages, salary, or other compensation of an employee;
- (4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
- (9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (10) a right of recoupment or set-off, but:
 - (A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (B) Section 9-404 applies with respect to defenses or claims of an account debtor;
- (11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

- 1 (A) liens on real property in Sections 9-203 and 9-308;
- 2 (B) fixtures in Section 9-334;
- 3 (C) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-519; and
- 4 (D) security agreements covering personal and real property in Section 9-604;
- 5 (12) an assignment of a claim arising in tort, other than a commercial tort claim, but
- 6 Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
- 7 (13) an assignment of a deposit account in a consumer transaction, but Sections 9-315 and
- 8 9-322 apply with respect to proceeds and priorities in proceeds; or
- 9 (14) the pledging or segregating of collateral for public deposits as authorized by § 51-22-
- 10 12, chapter 52-5, and chapter 4-6A.

11 Section 9-110. A security interest arising under Section 2-401, 2-505, 2-711(3), or
12 2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

- 13 (1) the security interest is enforceable, even if Section 9-203(b)(3) has not been satisfied;
- 14 (2) filing is not required to perfect the security interest;
- 15 (3) the rights of the secured party after default by the debtor are governed by Article 2
- 16 or 2A; and
- 17 (4) the security interest has priority over a conflicting security interest created by the
- 18 debtor.

19 Section 9-201. (a) Except as otherwise provided in the Uniform Commercial Code, a security
20 agreement is effective according to its terms between the parties, against purchasers of the
21 collateral, and against creditors.

22 (b) A transaction subject to this article is subject to any applicable rule of law which
23 establishes a different rule for consumers, any other statute or regulation that regulates the rates,
24 charges, agreements, and practices for loans, credit sales, or other extensions of credit, and any
25 consumer-protection statute or regulation.

1 (c) In case of conflict between this article and a rule of law, statute, or regulation described
2 in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute
3 or regulation described in subsection (b) has only the effect the statute or regulation specifies.

4 (d) This article does not:

5 (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute,
6 or regulation described in subsection (b); or

7 (2) extend the application of the rule of law, statute, or regulation to a transaction not
8 otherwise subject to it.

9 Section 9-202. Except as otherwise provided with respect to consignments or sales of
10 accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article
11 with regard to rights and obligations apply whether title to collateral is in the secured party or
12 the debtor.

13 Section 9-203. (a) A security interest attaches to collateral when it becomes enforceable
14 against the debtor with respect to the collateral, unless an agreement expressly postpones the
15 time of attachment.

16 (b) Except as otherwise provided in subsections (c) through (i), a security interest is
17 enforceable against the debtor and third parties with respect to the collateral only if :

18 (1) value has been given;

19 (2) the debtor has rights in the collateral or the power to transfer rights in the collateral
20 to a secured party; and

21 (3) one of the following conditions is met:

22 (A) the debtor has authenticated a security agreement that provides a description
23 of the collateral and, if the security interest covers timber to be cut, a
24 description of the land concerned;

25 (B) the collateral is not a certificated security and is in the possession of the

1 secured party under Section 9-313 pursuant to the debtor's security agreement;

2 (C) the collateral is a certificated security in registered form and the security
3 certificate has been delivered to the secured party under Section 8-301
4 pursuant to the debtor's security agreement; or

5 (D) the collateral is deposit accounts, electronic chattel paper, investment property,
6 or letter-of-credit rights, and the secured party has control under Section
7 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

8 (c) Subsection (b) is subject to Section 4-210 on the security interest of a collecting bank,
9 Section 5-118 on the security interest of a letter-of-credit issuer or nominated person, Section
10 9-110 on a security interest arising under Article 2 or 2A, and Section 9-206 on security interests
11 in investment property.

12 (d) A person becomes bound as debtor by a security agreement entered into by another
13 person if, by operation of law other than this article or by contract:

14 (1) the security agreement becomes effective to create a security interest in the person's
15 property; or

16 (2) the person becomes generally obligated for the obligations of the other person,
17 including the obligation secured under the security agreement, and acquires or
18 succeeds to all or substantially all of the assets of the other person.

19 (e) If a new debtor becomes bound as debtor by a security agreement entered into by another
20 person:

21 (1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired
22 property of the new debtor to the extent the property is described in the agreement;
23 and

24 (2) another agreement is not necessary to make a security interest in the property
25 enforceable.

1 (f) The attachment of a security interest in collateral gives the secured party the rights to
2 proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting
3 obligation for the collateral.

4 (g) The attachment of a security interest in a right to payment or performance secured by a
5 security interest or other lien on personal or real property is also attachment of a security interest
6 in the security interest, mortgage, or other lien.

7 (h) The attachment of a security interest in a securities account is also attachment of a
8 security interest in the security entitlements carried in the securities account.

9 (i) The attachment of a security interest in a commodity account is also attachment of a
10 security interest in the commodity contracts carried in the commodity account.

11 Section 9-204. (a) Except as otherwise provided in subsection (b), a security agreement may
12 create or provide for a security interest in after-acquired collateral.

13 (b) A security interest does not attach under a term constituting an after-acquired property
14 clause to:

15 (1) consumer goods, other than an accession when given as additional security, unless the
16 debtor acquires rights in them within 10 days after the secured party gives value; or

17 (2) a commercial tort claim.

18 (c) A security agreement may provide that collateral secures, or that accounts, chattel paper,
19 payment intangibles, or promissory notes are sold in connection with, future advances or other
20 value, whether or not the advances or value are given pursuant to commitment.

21 Section 9-204.1. In transactions entered into after June 30, 1978, and prior to July 1, 1979,
22 whereby the intent of the transaction was to create a security interest pursuant to this title, that
23 security interest shall be deemed to have attached at the time there was agreement that it attach,
24 when value was given, and when the debtor had rights in the collateral, unless an explicit
25 agreement postponed the time of attaching.

1 Section 9-205. (a) A security interest is not invalid or fraudulent against creditors solely
2 because:

3 (1) the debtor has the right or ability to:

4 (A) use, commingle, or dispose of all or part of the collateral, including returned
5 or repossessed goods;

6 (B) collect, compromise, enforce, or otherwise deal with collateral;

7 (C) accept the return of collateral or make repossessions; or

8 (D) use, commingle, or dispose of proceeds; or

9 (2) the secured party fails to require the debtor to account for proceeds or replace
10 collateral.

11 (b) This section does not relax the requirements of possession if attachment, perfection, or
12 enforcement of a security interest depends upon possession of the collateral by the secured party.

13 Section 9-206. (a) A security interest in favor of a securities intermediary attaches to a
14 person's security entitlement if:

15 (1) the person buys a financial asset through the securities intermediary in a transaction
16 in which the person is obligated to pay the purchase price to the securities
17 intermediary at the time of the purchase; and

18 (2) the securities intermediary credits the financial asset to the buyer's securities account
19 before the buyer pays the securities intermediary.

20 (b) The security interest described in subsection (a) secures the person's obligation to pay
21 for the financial asset.

22 (c) A security interest in favor of a person that delivers a certificated security or other
23 financial asset represented by a writing attaches to the security or other financial asset if:

24 (1) the security or other financial asset:

25 (A) in the ordinary course of business is transferred by delivery with any necessary

1 indorsement or assignment; and

2 (B) is delivered under an agreement between persons in the business of dealing
3 with such securities or financial assets; and

4 (2) the agreement calls for delivery against payment.

5 (d) The security interest described in subsection (c) secures the obligation to make payment
6 for the delivery.

7 Section 9-207. (a) Except as otherwise provided in subsection (d), a secured party shall use
8 reasonable care in the custody and preservation of collateral in the secured party's possession.
9 In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to
10 preserve rights against prior parties unless otherwise agreed.

11 (b) Except as otherwise provided in subsection (d), if a secured party has possession of
12 collateral:

13 (1) reasonable expenses, including the cost of insurance and payment of taxes or other
14 charges, incurred in the custody, preservation, use, or operation of the collateral are
15 chargeable to the debtor and are secured by the collateral;

16 (2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in
17 any effective insurance coverage;

18 (3) the secured party shall keep the collateral identifiable, but fungible collateral may be
19 commingled; and

20 (4) the secured party may use or operate the collateral:

21 (A) for the purpose of preserving the collateral or its value;

22 (B) as permitted by an order of a court having competent jurisdiction; or

23 (C) except in the case of consumer goods, in the manner and to the extent agreed
24 by the debtor.

25 (c) Except as otherwise provided in subsection (d), a secured party having possession of

collateral or control of collateral under Section 9-104, 9-105, 9-106, or 9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

Section 9-208. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Section 9-209. (a) Except as otherwise provided in subsection (c), this section applies if:

1 (1) there is no outstanding secured obligation; and

2 (2) the secured party is not committed to make advances, incur obligations, or otherwise
3 give value.

4 (b) Within 10 days after receiving an authenticated demand by the debtor, a secured party
5 shall send to an account debtor that has received notification of an assignment to the secured
6 party as assignee under Section 9-406(a) an authenticated record that releases the account debtor
7 from any further obligation to the secured party.

8 (c) This section does not apply to an assignment constituting the sale of an account, chattel
9 paper, or payment intangible.

10 Section 9-210. (a) In this section:

11 (1) "Request" means a record of a type described in paragraph (2), (3), or (4).

12 (2) "Request for an accounting" means a record authenticated by a debtor requesting that
13 the recipient provide an accounting of the unpaid obligations secured by collateral and
14 reasonably identifying the transaction or relationship that is the subject of the request.

15 (3) "Request regarding a list of collateral" means a record authenticated by a debtor
16 requesting that the recipient approve or correct a list of what the debtor believes to
17 be the collateral securing an obligation and reasonably identifying the transaction or
18 relationship that is the subject of the request.

19 (4) "Request regarding a statement of account" means a record authenticated by a debtor
20 requesting that the recipient approve or correct a statement indicating what the debtor
21 believes to be the aggregate amount of unpaid obligations secured by collateral as of
22 a specified date and reasonably identifying the transaction or relationship that is the
23 subject of the request.

24 (b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of
25 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply

1 with a request within 14 days after receipt:

2 (1) in the case of a request for an accounting, by authenticating and sending to the debtor
3 an accounting; and

4 (2) in the case of a request regarding a list of collateral or a request regarding a statement
5 of account, by authenticating and sending to the debtor an approval or correction.

6 (c) A secured party that claims a security interest in all of a particular type of collateral
7 owned by the debtor may comply with a request regarding a list of collateral by sending to the
8 debtor an authenticated record including a statement to that effect within 14 days after receipt.

9 (d) A person that receives a request regarding a list of collateral, claims no interest in the
10 collateral when it receives the request, and claimed an interest in the collateral at an earlier time
11 shall comply with the request within 14 days after receipt by sending to the debtor an
12 authenticated record:

13 (1) disclaiming any interest in the collateral; and

14 (2) if known to the recipient, providing the name and mailing address of any assignee of
15 or successor to the recipient's interest in the collateral.

16 (e) A person that receives a request for an accounting or a request regarding a statement of
17 account, claims no interest in the obligations when it receives the request, and claimed an interest
18 in the obligations at an earlier time shall comply with the request within 14 days after receipt by
19 sending to the debtor an authenticated record:

20 (1) disclaiming any interest in the obligations; and

21 (2) if known to the recipient, providing the name and mailing address of any assignee of
22 or successor to the recipient's interest in the obligations.

23 (f) A debtor is entitled without charge to one response to a request under this section during
24 any six-month period. The secured party may require payment of a charge not exceeding \$25 for
25 each additional response.

Section 9-301. Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Section 9-302. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

Section 9-303. (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

1 (b) Goods become covered by a certificate of title when a valid application for the certificate
2 of title and the applicable fee are delivered to the appropriate authority. Goods cease to be
3 covered by a certificate of title at the earlier of the time the certificate of title ceases to be
4 effective under the law of the issuing jurisdiction or the time the goods become covered
5 subsequently by a certificate of title issued by another jurisdiction.

6 (c) The local law of the jurisdiction under whose certificate of title the goods are covered
7 governs perfection, the effect of perfection or nonperfection, and the priority of a security
8 interest in goods covered by a certificate of title from the time the goods become covered by the
9 certificate of title until the goods cease to be covered by the certificate of title.

10 Section 9-304. (a) The local law of a bank's jurisdiction governs perfection, the effect of
11 perfection or nonperfection, and the priority of a security interest in a deposit account maintained
12 with that bank.

13 (b) The following rules determine a bank's jurisdiction for purposes of this part:

14 (1) If an agreement between the bank and the debtor governing the deposit account
15 expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes
16 of this part, this article, or the Uniform Commercial Code, that jurisdiction is the
17 bank's jurisdiction.

18 (2) If paragraph (1) does not apply and an agreement between the bank and its customer
19 governing the deposit account expressly provides that the agreement is governed by
20 the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

21 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank
22 and its customer governing the deposit account expressly provides that the deposit
23 account is maintained at an office in a particular jurisdiction, that jurisdiction is the
24 bank's jurisdiction.

25 (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction

1 in which the office identified in an account statement as the office serving the
2 customer's account is located.

3 (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction
4 in which the chief executive office of the bank is located.

5 Section 9-305. (a) Except as otherwise provided in subsection (c), the following rules apply:

6 (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction
7 governs perfection, the effect of perfection or nonperfection, and the priority of a
8 security interest in the certificated security represented thereby.

9 (2) The local law of the issuer's jurisdiction as specified in Section 8-110(d) governs
10 perfection, the effect of perfection or nonperfection, and the priority of a security
11 interest in an uncertificated security.

12 (3) The local law of the securities intermediary's jurisdiction as specified in Section
13 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority
14 of a security interest in a security entitlement or securities account.

15 (4) The local law of the commodity intermediary's jurisdiction governs perfection, the
16 effect of perfection or nonperfection, and the priority of a security interest in a
17 commodity contract or commodity account.

18 (b) The following rules determine a commodity intermediary's jurisdiction for purposes of
19 this part:

20 (1) If an agreement between the commodity intermediary and commodity customer
21 governing the commodity account expressly provides that a particular jurisdiction is
22 the commodity intermediary's jurisdiction for purposes of this part, this article, or the
23 Uniform Commercial Code, that jurisdiction is the commodity intermediary's
24 jurisdiction.

25 (2) If paragraph (1) does not apply and an agreement between the commodity

intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 9-306. (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a State.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the

1 letter-of-credit right as provided in Section 5-116.

2 (c) This section does not apply to a security interest that is perfected only under Section
3 9-308(d).

4 Section 9-307. (a) In this section, "place of business" means a place where a debtor conducts
5 its affairs.

6 (b) Except as otherwise provided in this section, the following rules determine a debtor's
7 location:

8 (1) A debtor who is an individual is located at the individual's principal residence.

9 (2) A debtor that is an organization and has only one place of business is located at its
10 place of business.

11 (3) A debtor that is an organization and has more than one place of business is located at
12 its chief executive office.

13 (c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive
14 office, as applicable, is located in a jurisdiction whose law generally requires information
15 concerning the existence of a nonpossessory security interest to be made generally available in
16 a filing, recording, or registration system as a condition or result of the security interest's
17 obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b)
18 does not apply, the debtor is located in the District of Columbia.

19 (d) A person that ceases to exist, have a residence, or have a place of business continues to
20 be located in the jurisdiction specified by subsections (b) and (c).

21 (e) A registered organization that is organized under the law of a State is located in that
22 State.

23 (f) Except as otherwise provided in subsection (i), a registered organization that is organized
24 under the law of the United States and a branch or agency of a bank that is not organized under
25 the law of the United States or a State are located:

1 (1) in the State that the law of the United States designates, if the law designates a State
2 of location;

3 (2) in the State that the registered organization, branch, or agency designates, if the law
4 of the United States authorizes the registered organization, branch, or agency to
5 designate its State of location; or

6 (3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

7 (g) A registered organization continues to be located in the jurisdiction specified by
8 subsection (e) or (f) notwithstanding:

9 (1) the suspension, revocation, forfeiture, or lapse of the registered organization's status
10 as such in its jurisdiction of organization; or

11 (2) the dissolution, winding up, or cancellation of the existence of the registered
12 organization.

13 (h) The United States is located in the District of Columbia.

14 (i) A branch or agency of a bank that is not organized under the law of the United States or
15 a State is located in the State in which the branch or agency is licensed, if all branches and
16 agencies of the bank are licensed in only one State.

17 (j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the
18 designated office of the agent upon which service of process may be made on behalf of the
19 carrier.

20 (k) This section applies only for purposes of this part.

21 Section 9-308. (a) Except as otherwise provided in this section and Section 9-309, a security
22 interest is perfected if it has attached and all of the applicable requirements for perfection in
23 Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it
24 attaches if the applicable requirements are satisfied before the security interest attaches.

25 (b) An agricultural lien is perfected if it has become effective and all of the applicable

1 requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected
2 when it becomes effective if the applicable requirements are satisfied before the agricultural lien
3 becomes effective.

4 (c) A security interest or agricultural lien is perfected continuously if it is originally perfected
5 by one method under this article and is later perfected by another method under this article,
6 without an intermediate period when it was unperfected.

7 (d) Perfection of a security interest in collateral also perfects a security interest in a
8 supporting obligation for the collateral.

9 (e) Perfection of a security interest in a right to payment or performance also perfects a
10 security interest in a security interest, mortgage, or other lien on personal or real property
11 securing the right. Any statute conflicting with this subsection is expressly subject to this
12 subsection.

13 (f) Perfection of a security interest in a securities account also perfects a security interest in
14 the security entitlements carried in the securities account.

15 (g) Perfection of a security interest in a commodity account also perfects a security interest
16 in the commodity contracts carried in the commodity account.

17 Section 9-309. The following security interests are perfected when they attach:

18 (1) a purchase-money security interest in consumer goods, except as otherwise provided
19 in Section 9-311(b) with respect to consumer goods that are subject to a statute or
20 treaty described in Section 9-311(a);

21 (2) an assignment of accounts or payment intangibles which does not by itself or in
22 conjunction with other assignments to the same assignee transfer a significant part of
23 the assignor's outstanding accounts or payment intangibles;

24 (3) a sale of a payment intangible;

25 (4) a sale of a promissory note;

- 1 (5) a security interest created by the assignment of a health-care-insurance receivable to
- 2 the provider of the health-care goods or services;
- 3 (6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until
- 4 the debtor obtains possession of the collateral;
- 5 (7) a security interest of a collecting bank arising under Section 4-210;
- 6 (8) a security interest of an issuer or nominated person arising under Section 5-118;
- 7 (9) a security interest arising in the delivery of a financial asset under Section 9-206(c);
- 8 (10) a security interest in investment property created by a broker or securities
- 9 intermediary;
- 10 (11) a security interest in a commodity contract or a commodity account created by a
- 11 commodity intermediary;
- 12 (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers
- 13 by the assignee thereunder; and
- 14 (13) a security interest created by an assignment of a beneficial interest in a decedent's
- 15 estate.

16 Section 9-310. (a) Except as otherwise provided in subsection (b) and Section 9-312(b), a
17 financing statement must be filed to perfect all security interests and agricultural liens.

18 (b) The filing of a financing statement is not necessary to perfect a security interest:

- 19 (1) that is perfected under Section 9-308(d), (e), (f), or (g);
- 20 (2) that is perfected under Section 9-309 when it attaches;
- 21 (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);
- 22 (4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);
- 23 (5) in certificated securities, documents, goods, or instruments which is perfected without
- 24 filing or possession under Section 9-312(e), (f), or (g);
- 25 (6) in collateral in the secured party's possession under Section 9-313;

- 1 (7) in a certificated security which is perfected by delivery of the security certificate to the
- 2 secured party under Section 9-313;
- 3 (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit
- 4 rights which is perfected by control under Section 9-314;
- 5 (9) in proceeds which is perfected under Section 9-315;
- 6 (10) that is perfected under Section 9-316; or
- 7 (11) subject to §§ 49-34-11 to 49-34-11.4, inclusive.

8 (c) If a secured party assigns a perfected security interest or agricultural lien, a filing under
9 this article is not required to continue the perfected status of the security interest against
10 creditors of and transferees from the original debtor.

11 Section 9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing
12 statement is not necessary or effective to perfect a security interest in property subject to:

- 13 (1) a statute, regulation, or treaty of the United States whose requirements for a security
14 interest's obtaining priority over the rights of a lien creditor with respect to the
15 property preempt Section 9-310(a);
- 16 (2) a certificate-of-title statute of this State under the law of which indication of a security
17 interest on the certificate of title is required as a condition of perfection; or
- 18 (3) a certificate-of-title statute of another jurisdiction which provides for a security
19 interest to be indicated on the certificate as a condition or result of the security
20 interest's obtaining priority over the rights of a lien creditor with respect to the
21 property.

22 (b) Compliance with the requirements of a statute, regulation, or treaty described in
23 subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing
24 of a financing statement under this article. Except as otherwise provided in subsection (d) and
25 Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest

1 in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected
2 only by compliance with those requirements, and a security interest so perfected remains
3 perfected notwithstanding a change in the use or transfer of possession of the collateral.

4 (c) Except as otherwise provided in subsection (d) and Section 9-316(d) and (e), duration
5 and renewal of perfection of a security interest perfected by compliance with the requirements
6 prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the
7 statute, regulation, or treaty. In other respects, the security interest is subject to this article.

8 (d) During any period in which collateral subject to a statute specified in subsection (a)(2)
9 is inventory held for sale or lease by a person or leased by that person as lessor and that person
10 is in the business of selling goods of that kind, this section does not apply to a security interest
11 in that collateral created by that person.

12 Section 9-312. (a) A security interest in chattel paper, negotiable documents, instruments,
13 or investment property may be perfected by filing.

14 (b) Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

15 (1) a security interest in a deposit account may be perfected only by control under Section
16 9-314;

17 (2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-
18 credit right may be perfected only by control under Section 9-314; and

19 (3) a security interest in money may be perfected only by the secured party's taking
20 possession under Section 9-313.

21 (c) While goods are in the possession of a bailee that has issued a negotiable document
22 covering the goods:

23 (1) a security interest in the goods may be perfected by perfecting a security interest in
24 the document; and

25 (2) a security interest perfected in the document has priority over any security interest

1 that becomes perfected in the goods by another method during that time.

2 (d) While goods are in the possession of a bailee that has issued a nonnegotiable document
3 covering the goods, a security interest in the goods may be perfected by:

4 (1) issuance of a document in the name of the secured party;

5 (2) the bailee's receipt of notification of the secured party's interest; or

6 (3) filing as to the goods.

7 (e) A security interest in certificated securities, negotiable documents, or instruments is
8 perfected without filing or the taking of possession for a period of 20 days from the time it
9 attaches to the extent that it arises for new value given under an authenticated security
10 agreement.

11 (f) A perfected security interest in a negotiable document or goods in possession of a bailee,
12 other than one that has issued a negotiable document for the goods, remains perfected for 20
13 days without filing if the secured party makes available to the debtor the goods or documents
14 representing the goods for the purpose of:

15 (1) ultimate sale or exchange; or

16 (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or
17 otherwise dealing with them in a manner preliminary to their sale or exchange.

18 (g) A perfected security interest in a certificated security or instrument remains perfected for
19 20 days without filing if the secured party delivers the security certificate or instrument to the
20 debtor for the purpose of:

21 (1) ultimate sale or exchange; or

22 (2) presentation, collection, enforcement, renewal, or registration of transfer.

23 (h) After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends
24 upon compliance with this article.

25 Section 9-313. (a) Except as otherwise provided in subsection (b), a secured party may

1 perfect a security interest in negotiable documents, goods, instruments, money, or tangible
2 chattel paper by taking possession of the collateral. A secured party may perfect a security
3 interest in certificated securities by taking delivery of the certificated securities under Section
4 8-301.

5 (b) With respect to goods covered by a certificate of title issued by this State, a secured party
6 may perfect a security interest in the goods by taking possession of the goods only in the
7 circumstances described in Section 9-316(d).

8 (c) With respect to collateral other than certificated securities and goods covered by a
9 document, a secured party takes possession of collateral in the possession of a person other than
10 the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course
11 of the debtor's business, when:

12 (1) the person in possession authenticates a record acknowledging that it holds possession
13 of the collateral for the secured party's benefit; or

14 (2) the person takes possession of the collateral after having authenticated a record
15 acknowledging that it will hold possession of collateral for the secured party's benefit.

16 (d) If perfection of a security interest depends upon possession of the collateral by a secured
17 party, perfection occurs no earlier than the time the secured party takes possession and continues
18 only while the secured party retains possession.

19 (e) A security interest in a certificated security in registered form is perfected by delivery
20 when delivery of the certificated security occurs under Section 8-301 and remains perfected by
21 delivery until the debtor obtains possession of the security certificate.

22 (f) A person in possession of collateral is not required to acknowledge that it holds
23 possession for a secured party's benefit.

24 (g) If a person acknowledges that it holds possession for the secured party's benefit:

25 (1) the acknowledgment is effective under subsection (c) or Section 8-301(a), even if the

1 acknowledgment violates the rights of a debtor; and

2 (2) unless the person otherwise agrees or law other than this article otherwise provides,
3 the person does not owe any duty to the secured party and is not required to confirm
4 the acknowledgment to another person.

5 (h) A secured party having possession of collateral does not relinquish possession by
6 delivering the collateral to a person other than the debtor or a lessee of the collateral from the
7 debtor in the ordinary course of the debtor's business if the person was instructed before the
8 delivery or is instructed contemporaneously with the delivery:

9 (1) to hold possession of the collateral for the secured party's benefit; or

10 (2) to redeliver the collateral to the secured party.

11 (i) A secured party does not relinquish possession, even if a delivery under subsection (h)
12 violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does
13 not owe any duty to the secured party and is not required to confirm the delivery to another
14 person unless the person otherwise agrees or law other than this article otherwise provides.

15 Section 9-314. (a) A security interest in investment property, deposit accounts, letter-of-
16 credit rights, or electronic chattel paper may be perfected by control of the collateral under
17 Section 9-104, 9-105, 9-106, or 9-107.

18 (b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights
19 is perfected by control under Section 9-104, 9-105, or 9-107 when the secured party obtains
20 control and remains perfected by control only while the secured party retains control.

21 (c) A security interest in investment property is perfected by control under Section 9-106
22 from the time the secured party obtains control and remains perfected by control until:

23 (1) the secured party does not have control; and

24 (2) one of the following occurs:

25 (A) if the collateral is a certificated security, the debtor has or acquires possession

1 of the security certificate;

2 (B) if the collateral is an uncertificated security, the issuer has registered or
3 registers the debtor as the registered owner; or

4 (C) if the collateral is a security entitlement, the debtor is or becomes the
5 entitlement holder.

6 Section 9-315. (a) Except as otherwise provided in this article and in Section 2-403(2):

7 (1) a security interest or agricultural lien continues in collateral notwithstanding sale,
8 lease, license, exchange, or other disposition thereof unless the secured party
9 authorized the disposition free of the security interest or agricultural lien; and

10 (2) a security interest attaches to any identifiable proceeds of collateral.

11 (b) Proceeds that are commingled with other property are identifiable proceeds:

12 (1) if the proceeds are goods, to the extent provided by Section 9-336; and

13 (2) if the proceeds are not goods, to the extent that the secured party identifies the
14 proceeds by a method of tracing, including application of equitable principles, that is
15 permitted under law other than this article with respect to commingled property of the
16 type involved.

17 (c) A security interest in proceeds is a perfected security interest if the security interest in the
18 original collateral was perfected.

19 (d) A perfected security interest in proceeds becomes unperfected on the 21st day after the
20 security interest attaches to the proceeds unless:

21 (1) the following conditions are satisfied:

22 (A) a filed financing statement covers the original collateral;

23 (B) the proceeds are collateral in which a security interest may be perfected by
24 filing in the office in which the financing statement has been filed; and

25 (C) the proceeds are not acquired with cash proceeds;

1 (2) the proceeds are identifiable cash proceeds; or

2 (3) the security interest in the proceeds is perfected other than under subsection (c) when
3 the security interest attaches to the proceeds or within 20 days thereafter.

4 (e) If a filed financing statement covers the original collateral, a security interest in proceeds
5 which remains perfected under subsection (d)(1) becomes unperfected at the later of:

6 (1) when the effectiveness of the filed financing statement lapses under Section 9-515 or
7 is terminated under Section 9-513; or

8 (2) the 21st day after the security interest attaches to the proceeds.

9 Section 9-316. (a) A security interest perfected pursuant to the law of the jurisdiction
10 designated in Section 9-301(1) or 9-305(c) remains perfected until the earliest of:

11 (1) the time perfection would have ceased under the law of that jurisdiction;

12 (2) the expiration of four months after a change of the debtor's location to another
13 jurisdiction; or

14 (3) the expiration of one year after a transfer of collateral to a person that thereby
15 becomes a debtor and is located in another jurisdiction.

16 (b) If a security interest described in subsection (a) becomes perfected under the law of the
17 other jurisdiction before the earliest time or event described in that subsection, it remains
18 perfected thereafter. If the security interest does not become perfected under the law of the other
19 jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have
20 been perfected as against a purchaser of the collateral for value.

21 (c) A possessory security interest in collateral, other than goods covered by a certificate of
22 title and as-extracted collateral consisting of goods, remains continuously perfected if:

23 (1) the collateral is located in one jurisdiction and subject to a security interest perfected
24 under the law of that jurisdiction;

25 (2) thereafter the collateral is brought into another jurisdiction; and

1 (3) upon entry into the other jurisdiction, the security interest is perfected under the law
2 of the other jurisdiction.

3 (d) Except as otherwise provided in subsection (e), a security interest in goods covered by
4 a certificate of title which is perfected by any method under the law of another jurisdiction when
5 the goods become covered by a certificate of title from this State remains perfected until the
6 security interest would have become unperfected under the law of the other jurisdiction had the
7 goods not become so covered.

8 (e) A security interest described in subsection (d) becomes unperfected as against a purchaser
9 of the goods for value and is deemed never to have been perfected as against a purchaser of the
10 goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313
11 are not satisfied before the earlier of:

12 (1) the time the security interest would have become unperfected under the law of the
13 other jurisdiction had the goods not become covered by a certificate of title from this
14 State; or

15 (2) the expiration of four months after the goods had become so covered.

16 (f) A security interest in deposit accounts, letter-of-credit rights, or investment property
17 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated
18 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's
19 jurisdiction, as applicable, remains perfected until the earlier of:

20 (1) the time the security interest would have become unperfected under the law of that
21 jurisdiction; or

22 (2) the expiration of four months after a change of the applicable jurisdiction to another
23 jurisdiction.

24 (g) If a security interest described in subsection (f) becomes perfected under the law of the
25 other jurisdiction before the earlier of the time or the end of the period described in that

1 subsection, it remains perfected thereafter. If the security interest does not become perfected
2 under the law of the other jurisdiction before the earlier of that time or the end of that period,
3 it becomes unperfected and is deemed never to have been perfected as against a purchaser of the
4 collateral for value.

5 Section 9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

6 (1) a person entitled to priority under Section 9-322; and

7 (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor
8 before the earlier of the time:

9 (A) the security interest or agricultural lien is perfected; or

10 (B) one of the conditions specified in Section 9-203(b)(3) is met and a financing
11 statement covering the collateral is filed.

12 (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of
13 tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a
14 security interest or agricultural lien if the buyer gives value and receives delivery of the collateral
15 without knowledge of the security interest or agricultural lien and before it is perfected.

16 (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security
17 interest or agricultural lien if the lessee gives value and receives delivery of the collateral without
18 knowledge of the security interest or agricultural lien and before it is perfected.

19 (d) A licensee of a general intangible or a buyer, other than a secured party, of accounts,
20 electronic chattel paper, general intangibles, or investment property other than a certificated
21 security takes free of a security interest if the licensee or buyer gives value without knowledge
22 of the security interest and before it is perfected.

23 (e) Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing
24 statement with respect to a purchase-money security interest before or within 20 days after the
25 debtor receives delivery of the collateral, the security interest takes priority over the rights of a

1 buyer, lessee, or lien creditor which arise between the time the security interest attaches and the
2 time of filing.

3 Section 9-318. (a) A debtor that has sold an account, chattel paper, payment intangible, or
4 promissory note does not retain a legal or equitable interest in the collateral sold.

5 (b) For purposes of determining the rights of creditors of, and purchasers for value of an
6 account or chattel paper from, a debtor that has sold an account or chattel paper, while the
7 buyer's security interest is unperfected, the debtor is deemed to have rights and title to the
8 account or chattel paper identical to those the debtor sold.

9 Section 9-319. (a) Except as otherwise provided in subsection (b), for purposes of
10 determining the rights of creditors of, and purchasers for value of goods from, a consignee, while
11 the goods are in the possession of the consignee, the consignee is deemed to have rights and title
12 to the goods identical to those the consignor had or had power to transfer.

13 (b) For purposes of determining the rights of a creditor of a consignee, law other than this
14 article determines the rights and title of a consignee while goods are in the consignee's
15 possession if, under this part, a perfected security interest held by the consignor would have
16 priority over the rights of the creditor.

17 Section 9-320. (a) Except as otherwise provided in subsection (e), a buyer in ordinary course
18 of business, other than a person buying farm products from a person engaged in farming
19 operations, takes free of a security interest created by the buyer's seller, even if the security
20 interest is perfected and the buyer knows of its existence.

21 (b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used
22 or bought the goods for use primarily for personal, family, or household purposes takes free of
23 a security interest, even if perfected, if the buyer buys:

24 (1) without knowledge of the security interest;

25 (2) for value;

1 (3) primarily for the buyer's personal, family, or household purposes; and

2 (4) before the filing of a financing statement covering the goods.

3 (c) To the extent that it affects the priority of a security interest over a buyer of goods under
4 subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller
5 is located is governed by Section 9-316(a) and (b).

6 (d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead
7 or minehead or after extraction takes free of an interest arising out of an encumbrance.

8 (e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the
9 secured party under Section 9-313.

10 Section 9-321. (a) In this section, "licensee in ordinary course of business" means a person
11 that becomes a licensee of a general intangible in good faith, without knowledge that the license
12 violates the rights of another person in the general intangible, and in the ordinary course from
13 a person in the business of licensing general intangibles of that kind. A person becomes a licensee
14 in the ordinary course if the license to the person comports with the usual or customary practices
15 in the kind of business in which the licensor is engaged or with the licensor's own usual or
16 customary practices.

17 (b) A licensee in ordinary course of business takes its rights under a nonexclusive license free
18 of a security interest in the general intangible created by the licensor, even if the security interest
19 is perfected and the licensee knows of its existence.

20 (c) A lessee in ordinary course of business takes its leasehold interest free of a security
21 interest in the goods created by the lessor, even if the security interest is perfected and the lessee
22 knows of its existence.

23 Section 9-322. (a) Except as otherwise provided in this section, priority among conflicting
24 security interests and agricultural liens in the same collateral is determined according to the
25 following rules:

1 (1) Conflicting perfected security interests and agricultural liens rank according to priority
2 in time of filing or perfection. Priority dates from the earlier of the time a filing
3 covering the collateral is first made or the security interest or agricultural lien is first
4 perfected, if there is no period thereafter when there is neither filing nor perfection.

5 (2) A perfected security interest or agricultural lien has priority over a conflicting
6 unperfected security interest or agricultural lien.

7 (3) The first security interest or agricultural lien to attach or become effective has priority
8 if conflicting security interests and agricultural liens are unperfected.

9 (b) For the purposes of subsection (a)(1):

10 (1) the time of filing or perfection as to a security interest in collateral is also the time of
11 filing or perfection as to a security interest in proceeds; and

12 (2) the time of filing or perfection as to a security interest in collateral supported by a
13 supporting obligation is also the time of filing or perfection as to a security interest
14 in the supporting obligation.

15 (c) Except as otherwise provided in subsection (f), a security interest in collateral which
16 qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329,
17 9-330, or 9-331 also has priority over a conflicting security interest in:

18 (1) any supporting obligation for the collateral; and

19 (2) proceeds of the collateral if:

20 (A) the security interest in proceeds is perfected;

21 (B) the proceeds are cash proceeds or of the same type as the collateral; and

22 (C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds
23 are cash proceeds, proceeds of the same type as the collateral, or an account
24 relating to the collateral.

25 (d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security

1 interest in chattel paper, deposit accounts, negotiable documents, instruments, investment
2 property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected
3 security interests in proceeds of the collateral rank according to priority in time of filing.

4 (e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel
5 paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

6 (f) Subsections (a) through (e) are subject to:

7 (1) subsection (g) and the other provisions of this part;

8 (2) Section 4-210 with respect to a security interest of a collecting bank;

9 (3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

10 (4) Section 9-110 with respect to a security interest arising under Article 2 or 2A.

11 (g) A perfected agricultural lien on collateral has priority over a conflicting security interest
12 in or agricultural lien on the same collateral if the statute creating the agricultural lien so
13 provides.

14 Section 9-323. (a) Except as otherwise provided in subsection (c), for purposes of
15 determining the priority of a perfected security interest under Section 9-322(a)(1), perfection of
16 the security interest dates from the time an advance is made to the extent that the security
17 interest secures an advance that:

18 (1) is made while the security interest is perfected only:

19 (A) under Section 9-309 when it attaches; or

20 (B) temporarily under Section 9-312(e), (f), or (g); and

21 (2) is not made pursuant to a commitment entered into before or while the security
22 interest is perfected by a method other than under Section 9-309 or 9-312(e), (f), or
23 (g).

24 (b) Except as otherwise provided in subsection (c), a security interest is subordinate to the
25 rights of a person that becomes a lien creditor to the extent that the security interest secures an

1 advance made more than 45 days after the person becomes a lien creditor unless the advance is
2 made:

3 (1) without knowledge of the lien; or

4 (2) pursuant to a commitment entered into without knowledge of the lien.

5 (c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is
6 a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

7 (d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in
8 ordinary course of business takes free of a security interest to the extent that it secures advances
9 made after the earlier of:

10 (1) the time the secured party acquires knowledge of the buyer's purchase; or

11 (2) 45 days after the purchase.

12 (e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered
13 into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

14 (f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in
15 ordinary course of business, takes the leasehold interest free of a security interest to the extent
16 that it secures advances made after the earlier of:

17 (1) the time the secured party acquires knowledge of the lease; or

18 (2) 45 days after the lease contract becomes enforceable.

19 (g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered
20 into without knowledge of the lease and before the expiration of the 45-day period.

21 Section 9-324. (a) Except as otherwise provided in subsection (g), a perfected purchase-
22 money security interest in goods other than inventory or livestock has priority over a conflicting
23 security interest in the same goods, and, except as otherwise provided in Section 9-327, a
24 perfected security interest in its identifiable proceeds also has priority, if the purchase-money
25 security interest is perfected when the debtor receives possession of the collateral or within 20

1 days thereafter.

2 (b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected
3 purchase-money security interest in inventory has priority over a conflicting security interest in
4 the same inventory, has priority over a conflicting security interest in chattel paper or an
5 instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so
6 provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority
7 in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are
8 received on or before the delivery of the inventory to a buyer, if:

- 9 (1) the purchase-money security interest is perfected when the debtor receives possession
10 of the inventory;
- 11 (2) the purchase-money secured party sends an authenticated notification to the holder
12 of the conflicting security interest;
- 13 (3) the holder of the conflicting security interest receives the notification within five years
14 before the debtor receives possession of the inventory; and
- 15 (4) the notification states that the person sending the notification has or expects to
16 acquire a purchase-money security interest in inventory of the debtor and describes
17 the inventory.

18 (c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest
19 had filed a financing statement covering the same types of inventory:

- 20 (1) if the purchase-money security interest is perfected by filing, before the date of the
21 filing; or
- 22 (2) if the purchase-money security interest is temporarily perfected without filing or
23 possession under Section 9-312(f), before the beginning of the 20-day period
24 thereunder.

25 (d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected

1 purchase-money security interest in livestock that are farm products has priority over a
2 conflicting security interest in the same livestock, and, except as otherwise provided in Section
3 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their
4 unmanufactured states also has priority, if:

- 5 (1) the purchase-money security interest is perfected when the debtor receives possession
6 of the livestock;
- 7 (2) the purchase-money secured party sends an authenticated notification to the holder
8 of the conflicting security interest;
- 9 (3) the holder of the conflicting security interest receives the notification within six
10 months before the debtor receives possession of the livestock; and
- 11 (4) the notification states that the person sending the notification has or expects to
12 acquire a purchase-money security interest in livestock of the debtor and describes the
13 livestock.

14 (e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest
15 had filed a financing statement covering the same types of livestock:

- 16 (1) if the purchase-money security interest is perfected by filing, before the date of the
17 filing; or
- 18 (2) if the purchase-money security interest is temporarily perfected without filing or
19 possession under Section 9-312(f), before the beginning of the 20-day period
20 thereunder.

21 (f) Except as otherwise provided in subsection (g), a perfected purchase-money security
22 interest in software has priority over a conflicting security interest in the same collateral, and,
23 except as otherwise provided in Section 9-327, a perfected security interest in its identifiable
24 proceeds also has priority, to the extent that the purchase-money security interest in the goods
25 in which the software was acquired for use has priority in the goods and proceeds of the goods

under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

Section 9-325. (a) Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under Section 9-322(a) or 9-324; or

(2) arose solely under Section 2-711(3) or 2A-508(5).

Section 9-326. (a) Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely

1 under Section 9-508. However, if the security agreements to which a new debtor became bound
2 as debtor were not entered into by the same original debtor, the conflicting security interests rank
3 according to priority in time of the new debtor's having become bound.

4 Section 9-327. The following rules govern priority among conflicting security interests in the
5 same deposit account:

6 (1) A security interest held by a secured party having control of the deposit account under
7 Section 9-104 has priority over a conflicting security interest held by a secured party
8 that does not have control.

9 (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected
10 by control under Section 9-314 rank according to priority in time of obtaining control.

11 (3) Except as otherwise provided in paragraph (4), a security interest held by the bank
12 with which the deposit account is maintained has priority over a conflicting security
13 interest held by another secured party.

14 (4) A security interest perfected by control under Section 9-104(a)(3) has priority over
15 a security interest held by the bank with which the deposit account is maintained.

16 Section 9-328. The following rules govern priority among conflicting security interests in the
17 same investment property:

18 (1) A security interest held by a secured party having control of investment property
19 under Section 9-106 has priority over a security interest held by a secured party that
20 does not have control of the investment property.

21 (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests
22 held by secured parties each of which has control under Section 9-106 rank according
23 to priority in time of:

24 (A) if the collateral is a security, obtaining control;

25 (B) if the collateral is a security entitlement carried in a securities account and:

- 1 (i) if the secured party obtained control under Section 8-106(d)(1), the
2 secured party's becoming the person for which the securities account is
3 maintained;
- 4 (ii) if the secured party obtained control under Section 8-106(d)(2), the
5 securities intermediary's agreement to comply with the secured party's
6 entitlement orders with respect to security entitlements carried or to be
7 carried in the securities account; or
- 8 (iii) if the secured party obtained control through another person under
9 Section 8-106(d)(3), the time on which priority would be based under
10 this paragraph if the other person were the secured party; or
- 11 (C) if the collateral is a commodity contract carried with a commodity
12 intermediary, the satisfaction of the requirement for control specified in Section
13 9-106(b)(2) with respect to commodity contracts carried or to be carried with
14 the commodity intermediary.
- 15 (3) A security interest held by a securities intermediary in a security entitlement or a
16 securities account maintained with the securities intermediary has priority over a
17 conflicting security interest held by another secured party.
- 18 (4) A security interest held by a commodity intermediary in a commodity contract or a
19 commodity account maintained with the commodity intermediary has priority over a
20 conflicting security interest held by another secured party.
- 21 (5) A security interest in a certificated security in registered form which is perfected by
22 taking delivery under Section 9-313(a) and not by control under Section 9-314 has
23 priority over a conflicting security interest perfected by a method other than control.
- 24 (6) Conflicting security interests created by a broker, securities intermediary, or
25 commodity intermediary which are perfected without control under Section 9-106

1 rank equally.

2 (7) In all other cases, priority among conflicting security interests in investment property
3 is governed by Sections 9-322 and 9-323.

4 Section 9-329. The following rules govern priority among conflicting security interests in the
5 same letter-of-credit right:

6 (1) A security interest held by a secured party having control of the letter-of-credit right
7 under Section 9-107 has priority to the extent of its control over a conflicting security
8 interest held by a secured party that does not have control.

9 (2) Security interests perfected by control under Section 9-314 rank according to priority
10 in time of obtaining control.

11 Section 9-330. (a) A purchaser of chattel paper has priority over a security interest in the
12 chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

13 (1) in good faith and in the ordinary course of the purchaser's business, the purchaser
14 gives new value and takes possession of the chattel paper or obtains control of the
15 chattel paper under Section 9-105; and

16 (2) the chattel paper does not indicate that it has been assigned to an identified assignee
17 other than the purchaser.

18 (b) A purchaser of chattel paper has priority over a security interest in the chattel paper
19 which is claimed other than merely as proceeds of inventory subject to a security interest if the
20 purchaser gives new value and takes possession of the chattel paper or obtains control of the
21 chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's
22 business, and without knowledge that the purchase violates the rights of the secured party.

23 (c) Except as otherwise provided in Section 9-327, a purchaser having priority in chattel
24 paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent
25 that:

1 (1) Section 9-322 provides for priority in the proceeds; or

2 (2) the proceeds consist of the specific goods covered by the chattel paper or cash
3 proceeds of the specific goods, even if the purchaser's security interest in the
4 proceeds is unperfected.

5 (d) Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has
6 priority over a security interest in the instrument perfected by a method other than possession
7 if the purchaser gives value and takes possession of the instrument in good faith and without
8 knowledge that the purchase violates the rights of the secured party.

9 (e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest
10 in inventory gives new value for chattel paper constituting proceeds of the inventory.

11 (f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that
12 it has been assigned to an identified secured party other than the purchaser, a purchaser of the
13 chattel paper or instrument has knowledge that the purchase violates the rights of the secured
14 party.

15 Section 9-331. (a) This article does not limit the rights of a holder in due course of a
16 negotiable instrument, a holder to which a negotiable document of title has been duly negotiated,
17 or a protected purchaser of a security. These holders or purchasers take priority over an earlier
18 security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

19 (b) This article does not limit the rights of or impose liability on a person to the extent that
20 the person is protected against the assertion of a claim under Article 8.

21 (c) Filing under this article does not constitute notice of a claim or defense to the holders,
22 or purchasers, or persons described in subsections (a) and (b).

23 Section 9-332. (a) A transferee of money takes the money free of a security interest unless
24 the transferee acts in collusion with the debtor in violating the rights of the secured party.

25 (b) A transferee of funds from a deposit account takes the funds free of a security interest

1 in the deposit account unless the transferee acts in collusion with the debtor in violating the rights
2 of the secured party.

3 Section 9-333. (a) In this section, "possessory lien" means an interest, other than a security
4 interest or an agricultural lien:

- 5 (1) which secures payment or performance of an obligation for services or materials
6 furnished with respect to goods by a person in the ordinary course of the person's
7 business;
- 8 (2) which is created by statute or rule of law in favor of the person; and
- 9 (3) whose effectiveness depends on the person's possession of the goods.

10 (b) A possessory lien on goods has priority over a security interest in the goods unless the
11 lien is created by a statute that expressly provides otherwise.

12 Section 9-334. (a) A security interest under this article may be created in goods that are
13 fixtures or may continue in goods that become fixtures. A security interest does not exist under
14 this article in ordinary building materials incorporated into an improvement on land.

15 (b) This article does not prevent creation of an encumbrance upon fixtures under real
16 property law.

17 (c) In cases not governed by subsections (d) through (h), a security interest in fixtures is
18 subordinate to a conflicting interest of an encumbrancer or owner of the related real property
19 other than the debtor.

20 (d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures
21 has priority over a conflicting interest of an encumbrancer or owner of the real property if the
22 debtor has an interest of record in or is in possession of the real property and:

- 23 (1) the security interest is a purchase-money security interest;
- 24 (2) the interest of the encumbrancer or owner arises before the goods become fixtures;
- 25 and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Section 9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security

1 interest or disclaimed an interest in the goods as fixtures; or

2 (2) the debtor has a right to remove the goods as against the encumbrancer or owner.

3 (g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time
4 if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

5 (h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred
6 for the construction of an improvement on land, including the acquisition cost of the land, if a
7 recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e)
8 and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the
9 mortgage is recorded before the goods become fixtures and the goods become fixtures before
10 the completion of the construction. A mortgage has this priority to the same extent as a
11 construction mortgage to the extent that it is given to refinance a construction mortgage.

12 (i) A perfected security interest in crops growing on real property has priority over a
13 conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest
14 of record in or is in possession of the real property.

15 (j) Subsection (i) prevails over any inconsistent statute.

16 Section 9-335. (a) A security interest may be created in an accession and continues in
17 collateral that becomes an accession.

18 (b) If a security interest is perfected when the collateral becomes an accession, the security
19 interest remains perfected in the collateral.

20 (c) Except as otherwise provided in subsection (d), the other provisions of this part
21 determine the priority of a security interest in an accession.

22 (d) A security interest in an accession is subordinate to a security interest in the whole which
23 is perfected by compliance with the requirements of a certificate-of-title statute under Section
24 9-311(b).

25 (e) After default, subject to Part 6, a secured party may remove an accession from other

1 goods if the security interest in the accession has priority over the claims of every person having
2 an interest in the whole.

3 (f) A secured party that removes an accession from other goods under subsection (e) shall
4 promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or
5 of the other goods, other than the debtor, for the cost of repair of any physical injury to the
6 whole or the other goods. The secured party need not reimburse the holder or owner for any
7 diminution in value of the whole or the other goods caused by the absence of the accession
8 removed or by any necessity for replacing it. A person entitled to reimbursement may refuse
9 permission to remove until the secured party gives adequate assurance for the performance of
10 the obligation to reimburse.

11 Section 9-336. (a) In this section, "commingled goods" means goods that are physically
12 united with other goods in such a manner that their identity is lost in a product or mass.

13 (b) A security interest does not exist in commingled goods as such. However, a security
14 interest may attach to a product or mass that results when goods become commingled goods.

15 (c) If collateral becomes commingled goods, a security interest attaches to the product or
16 mass.

17 (d) If a security interest in collateral is perfected before the collateral becomes commingled
18 goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

19 (e) Except as otherwise provided in subsection (f), the other provisions of this part determine
20 the priority of a security interest that attaches to the product or mass under subsection (c).

21 (f) If more than one security interest attaches to the product or mass under subsection (c),
22 the following rules determine priority:

23 (1) A security interest that is perfected under subsection (d) has priority over a security
24 interest that is unperfected at the time the collateral becomes commingled goods.

25 (2) If more than one security interest is perfected under subsection (d), the security

1 interests rank equally in proportion to the value of the collateral at the time it became
2 commingled goods.

3 Section 9-337. If, while a security interest in goods is perfected by any method under the law
4 of another jurisdiction, this State issues a certificate of title that does not show that the goods
5 are subject to the security interest or contain a statement that they may be subject to security
6 interests not shown on the certificate:

- 7 (1) a buyer of the goods, other than a person in the business of selling goods of that kind,
8 takes free of the security interest if the buyer gives value and receives delivery of the
9 goods after issuance of the certificate and without knowledge of the security interest;
10 and
11 (2) the security interest is subordinate to a conflicting security interest in the goods that
12 attaches, and is perfected under Section 9-311(b), after issuance of the certificate and
13 without the conflicting secured party's knowledge of the security interest.

14 Section 9-338. If a security interest or agricultural lien is perfected by a filed financing
15 statement providing information described in Section 9-516(b)(5) which is incorrect at the time
16 the financing statement is filed:

- 17 (1) the security interest or agricultural lien is subordinate to a conflicting perfected
18 security interest in the collateral to the extent that the holder of the conflicting
19 security interest gives value in reasonable reliance upon the incorrect information; and
20 (2) a purchaser, other than a secured party, of the collateral takes free of the security
21 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect
22 information, the purchaser gives value and, in the case of chattel paper, documents,
23 goods, instruments, or a security certificate, receives delivery of the collateral.

24 Section 9-339. This article does not preclude subordination by agreement by a person entitled
25 to priority.

1 Section 9-340. (a) Except as otherwise provided in subsection (c), a bank with which a
2 deposit account is maintained may exercise any right of recoupment or set-off against a secured
3 party that holds a security interest in the deposit account.

4 (b) Except as otherwise provided in subsection (c), the application of this article to a security
5 interest in a deposit account does not affect a right of recoupment or set-off of the secured party
6 as to a deposit account maintained with the secured party.

7 (c) The exercise by a bank of a set-off against a deposit account is ineffective against a
8 secured party that holds a security interest in the deposit account which is perfected by control
9 under Section 9-104(a)(3), if the set-off is based on a claim against the debtor.

10 Section 9-341. Except as otherwise provided in Section 9-340(c), and unless the bank
11 otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit
12 account maintained with the bank are not terminated, suspended, or modified by:

- 13 (1) the creation, attachment, or perfection of a security interest in the deposit account;
14 (2) the bank's knowledge of the security interest; or
15 (3) the bank's receipt of instructions from the secured party.

16 Section 9-342. This article does not require a bank to enter into an agreement of the kind
17 described in Section 9-104(a)(2), even if its customer so requests or directs. A bank that has
18 entered into such an agreement is not required to confirm the existence of the agreement to
19 another person unless requested to do so by its customer.

20 Section 9-401. (a) Except as otherwise provided in subsection (b) and Sections 9-406, 9-407,
21 9-408, and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily
22 transferred is governed by law other than this article.

23 (b) An agreement between the debtor and secured party which prohibits a transfer of the
24 debtor's rights in collateral or makes the transfer a default does not prevent the transfer from
25 taking effect.

1 Section 9-402. The existence of a security interest, agricultural lien, or authority given to a
2 debtor to dispose of or use collateral, without more, does not subject a secured party to liability
3 in contract or tort for the debtor's acts or omissions.

4 Section 9-403. (a) In this section, "value" has the meaning provided in Section 3-303(a).

5 (b) Except as otherwise provided in this section, an agreement between an account debtor
6 and an assignor not to assert against an assignee any claim or defense that the account debtor
7 may have against the assignor is enforceable by an assignee that takes an assignment:

8 (1) for value;

9 (2) in good faith;

10 (3) without notice of a claim of a property or possessory right to the property assigned;
11 and

12 (4) without notice of a defense or claim in recoupment of the type that may be asserted
13 against a person entitled to enforce a negotiable instrument under Section 3-305(a).

14 (c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder
15 in due course of a negotiable instrument under Section 3-305(b).

16 (d) In a consumer transaction, if a record evidences the account debtor's obligation, law
17 other than this article requires that the record include a statement to the effect that the rights of
18 an assignee are subject to claims or defenses that the account debtor could assert against the
19 original obligee, and the record does not include such a statement:

20 (1) the record has the same effect as if the record included such a statement; and

21 (2) the account debtor may assert against an assignee those claims and defenses that
22 would have been available if the record included such a statement.

23 (e) This section is subject to law other than this article which establishes a different rule for
24 an account debtor who is an individual and who incurred the obligation primarily for personal,
25 family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Section 9-404. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

Section 9-405. (a) A modification of or substitution for an assigned contract is effective

1 against an assignee if made in good faith. The assignee acquires corresponding rights under the
2 modified or substituted contract. The assignment may provide that the modification or
3 substitution is a breach of contract by the assignor. This subsection is subject to subsections (b)
4 through (d).

5 (b) Subsection (a) applies to the extent that:

6 (1) the right to payment or a part thereof under an assigned contract has not been fully
7 earned by performance; or

8 (2) the right to payment or a part thereof has been fully earned by performance and the
9 account debtor has not received notification of the assignment under Section
10 9-406(a).

11 (c) This section is subject to law other than this article which establishes a different rule for
12 an account debtor who is an individual and who incurred the obligation primarily for personal,
13 family, or household purposes.

14 (d) This section does not apply to an assignment of a health-care-insurance receivable.

15 Section 9-406. (a) Subject to subsections (b) through (i), an account debtor on an account,
16 chattel paper, or a payment intangible may discharge its obligation by paying the assignor until,
17 but not after, the account debtor receives a notification, authenticated by the assignor or the
18 assignee, that the amount due or to become due has been assigned and that payment is to be
19 made to the assignee. After receipt of the notification, the account debtor may discharge its
20 obligation by paying the assignee and may not discharge the obligation by paying the assignor.

21 (b) Subject to subsection (h), notification is ineffective under subsection (a):

22 (1) if it does not reasonably identify the rights assigned;

23 (2) to the extent that an agreement between an account debtor and a seller of a payment
24 intangible limits the account debtor's duty to pay a person other than the seller and
25 the limitation is effective under law other than this article; or

1 (3) at the option of an account debtor, if the notification notifies the account debtor to
2 make less than the full amount of any installment or other periodic payment to the
3 assignee, even if:

4 (A) only a portion of the account, chattel paper, or payment intangible has been
5 assigned to that assignee;

6 (B) a portion has been assigned to another assignee; or

7 (C) the account debtor knows that the assignment to that assignee is limited.

8 (c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably
9 furnish reasonable proof that the assignment has been made. Unless the assignee complies, the
10 account debtor may discharge its obligation by paying the assignor, even if the account debtor
11 has received a notification under subsection (a).

12 (d) Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and
13 subject to subsection (h), a term in an agreement between an account debtor and an assignor or
14 in a promissory note is ineffective to the extent that it:

15 (1) prohibits, restricts, or requires the consent of the account debtor or person obligated
16 on the promissory note to the assignment or transfer of, or the creation, attachment,
17 perfection, or enforcement of a security interest in, the account, chattel paper,
18 payment intangible, or promissory note; or

19 (2) provides that the assignment or transfer or the creation, attachment, perfection, or
20 enforcement of the security interest may give rise to a default, breach, right of
21 recoupment, claim, defense, termination, right of termination, or remedy under the
22 account, chattel paper, payment intangible, or promissory note.

23 (e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

24 (f) Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections
25 (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent

1 of a government, governmental body or official, or account debtor to the assignment or transfer
2 of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that
3 the rule of law, statute, or regulation:

4 (1) prohibits, restricts, or requires the consent of the government, governmental body or
5 official, or account debtor to the assignment or transfer of, or the creation,
6 attachment, perfection, or enforcement of a security interest in the account or chattel
7 paper; or

8 (2) provides that the assignment or transfer or the creation, attachment, perfection, or
9 enforcement of the security interest may give rise to a default, breach, right of
10 recoupment, claim, defense, termination, right of termination, or remedy under the
11 account or chattel paper.

12 (g) Subject to subsection (h), an account debtor may not waive or vary its option under
13 subsection (b)(3).

14 (h) This section is subject to law other than this article which establishes a different rule for
15 an account debtor who is an individual and who incurred the obligation primarily for personal,
16 family, or household purposes.

17 (i) This section does not apply to an assignment of a health-care-insurance receivable.

18 (j) This section prevails over any inconsistent statute.

19 Section 9-407. (a) Except as otherwise provided in subsection (b), a term in a lease
20 agreement is ineffective to the extent that it:

21 (1) prohibits, restricts, or requires the consent of a party to the lease to the assignment
22 or transfer of, or the creation, attachment, perfection, or enforcement of a security
23 interest in, an interest of a party under the lease contract or in the lessor's residual
24 interest in the goods; or

25 (2) provides that the assignment or transfer or the creation, attachment, perfection, or

1 enforcement of the security interest may give rise to a default, breach, right of
2 recoupment, claim, defense, termination, right of termination, or remedy under the
3 lease.

4 (b) Except as otherwise provided in Section 2A-303(7), a term described in subsection (a)(2)
5 is effective to the extent that there is:

6 (1) a transfer by the lessee of the lessee's right of possession or use of the goods in
7 violation of the term; or

8 (2) a delegation of a material performance of either party to the lease contract in violation
9 of the term.

10 (c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's
11 interest under the lease contract or the lessor's residual interest in the goods is not a transfer that
12 materially impairs the lessee's prospect of obtaining return performance or materially changes
13 the duty of or materially increases the burden or risk imposed on the lessee within the purview
14 of Section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a
15 delegation of material performance of the lessor.

16 Section 9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory
17 note or in an agreement between an account debtor and a debtor which relates to a health-care-
18 insurance receivable or a general intangible, including a contract, permit, license, or franchise,
19 and which term prohibits, restricts, or requires the consent of the person obligated on the
20 promissory note or the account debtor to, the assignment or transfer of, or creation, attachment,
21 or perfection of a security interest in, the promissory note, health-care-insurance receivable, or
22 general intangible, is ineffective to the extent that the term:

23 (1) would impair the creation, attachment, or perfection of a security interest; or

24 (2) provides that the assignment or transfer or the creation, attachment, or perfection of
25 the security interest may give rise to a default, breach, right of recoupment, claim,

1 defense, termination, right of termination, or remedy under the promissory note,
2 health-care-insurance receivable, or general intangible.

3 (b) Subsection (a) applies to a security interest in a payment intangible or promissory note
4 only if the security interest arises out of a sale of the payment intangible or promissory note.

5 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a
6 government, governmental body or official, person obligated on a promissory note, or account
7 debtor to the assignment or transfer of, or creation of a security interest in, a promissory note,
8 health-care-insurance receivable, or general intangible, including a contract, permit, license, or
9 franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law,
10 statute, or regulation:

11 (1) would impair the creation, attachment, or perfection of a security interest; or

12 (2) provides that the assignment or transfer or the creation, attachment, or perfection of
13 the security interest may give rise to a default, breach, right of recoupment, claim,
14 defense, termination, right of termination, or remedy under the promissory note,
15 health-care-insurance receivable, or general intangible.

16 (d) To the extent that a term in a promissory note or in an agreement between an account
17 debtor and a debtor which relates to a health-care-insurance receivable or general intangible or
18 a rule of law, statute, or regulation described in subsection (c) would be effective under law
19 other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or
20 perfection of a security interest in the promissory note, health-care-insurance receivable, or
21 general intangible:

22 (1) is not enforceable against the person obligated on the promissory note or the account
23 debtor;

24 (2) does not impose a duty or obligation on the person obligated on the promissory note
25 or the account debtor;

1 (3) does not require the person obligated on the promissory note or the account debtor
2 to recognize the security interest, pay or render performance to the secured party, or
3 accept payment or performance from the secured party;

4 (4) does not entitle the secured party to use or assign the debtor's rights under the
5 promissory note, health-care-insurance receivable, or general intangible, including any
6 related information or materials furnished to the debtor in the transaction giving rise
7 to the promissory note, health-care-insurance receivable, or general intangible;

8 (5) does not entitle the secured party to use, assign, possess, or have access to any trade
9 secrets or confidential information of the person obligated on the promissory note or
10 the account debtor; and

11 (6) does not entitle the secured party to enforce the security interest in the promissory
12 note, health-care-insurance receivable, or general intangible.

13 (e) This section prevails over any inconsistent statute.

14 Section 9-409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom,
15 or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of
16 an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a
17 security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law,
18 statute, regulation, custom, or practice:

19 (1) would impair the creation, attachment, or perfection of a security interest in the letter-
20 of-credit right; or

21 (2) provides that the assignment or the creation, attachment, or perfection of the security
22 interest may give rise to a default, breach, right of recoupment, claim, defense,
23 termination, right of termination, or remedy under the letter-of-credit right.

24 (b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would
25 be effective under law other than this article or a custom or practice applicable to the letter of

1 credit, to the transfer of a right to draw or otherwise demand performance under the letter of
2 credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment,
3 or perfection of a security interest in the letter-of-credit right:

4 (1) is not enforceable against the applicant, issuer, nominated person, or transferee
5 beneficiary;

6 (2) imposes no duties or obligations on the applicant, issuer, nominated person, or
7 transferee beneficiary; and

8 (3) does not require the applicant, issuer, nominated person, or transferee beneficiary to
9 recognize the security interest, pay or render performance to the secured party, or
10 accept payment or other performance from the secured party.

11 Section 9-501. (a) Except as otherwise provided in subsection (b), if the local law of this
12 State governs perfection of a security interest or agricultural lien, the office in which to file a
13 financing statement to perfect the security interest or agricultural lien is:

14 (1) the office designated for the filing or recording of a record of a mortgage on the
15 related real property, if:

16 (A) the collateral is as-extracted collateral or timber to be cut; or

17 (B) the financing statement is filed as a fixture filing and the collateral is goods that
18 are or are to become fixtures; or

19 (2) the office of the secretary of state, in all other cases, including a case in which the
20 collateral is goods that are or are to become fixtures and the financing statement is not
21 filed as a fixture filing.

22 (b) The office in which to file a financing statement to perfect a security interest in collateral,
23 including fixtures, of a transmitting utility is the office of the secretary of state. The financing
24 statement also constitutes a fixture filing as to the collateral indicated in the financing statement
25 which is or is to become fixtures.

1 Section 9-501.1. All statements to continue, release, assign, amend or terminate any financing
2 statements filed subsequent to December 31, 1979, and prior to July 1, 1980, notwithstanding
3 any noncompliance with § 57A-9-401.1 as amended, are hereby cured, legalized and validated
4 as fully as if such filings had been made in full compliance with § 57A-9-401.1.

5 Section 9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

- 6 (1) provides the name of the debtor and either the social security number or the internal
7 revenue service taxpayer identification number of the debtor;
- 8 (2) provides the name of the secured party or a representative of the secured party; and
- 9 (3) indicates the collateral covered by the financing statement.

10 (b) Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement
11 that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and
12 covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- 13 (1) indicate that it covers this type of collateral;
- 14 (2) indicate that it is to be filed for record in the real property records;
- 15 (3) provide a description of the real property to which the collateral is related sufficient
16 to give constructive notice of a mortgage under the law of this State if the description
17 were contained in a record of the mortgage of the real property. A financing statement
18 covering timber to be cut or covering minerals or the like (including oil and gas) or
19 accounts subject to Section 9-301, or a financing statement filed as a fixture filing
20 where the debtor is not a transmitting utility, must show that it covers this type of
21 collateral, must recite that it is to be filed for record in the real estate records, and the
22 financing statement must contain a description of the real estate sufficient if it were
23 contained in a mortgage of the real estate to give constructive notice of the mortgage
24 under the law of this state. If the debtor does not have an interest of record in the real
25 estate, the financing statement must show the name of a record owner. No description

1 of the real estate or the name of the record owner thereof is required for a fixture
2 filing where the debtor is a transmitting utility; and

3 (4) if the debtor does not have an interest of record in the real property, provide the name
4 of a record owner.

5 (c) A record of a mortgage is effective, from the date of recording, as a financing statement
6 filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to
7 be cut only if:

8 (1) the record indicates the goods or accounts that it covers;

9 (2) the goods are or are to become fixtures related to the real property described in the
10 record or the collateral is related to the real property described in the record and is as-
11 extracted collateral or timber to be cut;

12 (3) the record satisfies the requirements for a financing statement in this section other
13 than an indication that it is to be filed in the real property records; and

14 (4) the record is recorded.

15 (d) A financing statement may be filed before a security agreement is made or a security
16 interest otherwise attaches.

17 Section 9-503. (a) A financing statement sufficiently provides the name of the debtor:

18 (1) if the debtor is a registered organization, only if the financing statement provides the
19 name of the debtor indicated on the public record of the debtor's jurisdiction of
20 organization which shows the debtor to have been organized;

21 (2) if the debtor is a decedent's estate, only if the financing statement provides the name
22 of the decedent and indicates that the debtor is an estate;

23 (3) if the debtor is a trust or a trustee acting with respect to property held in trust, only
24 if the financing statement:

25 (A) provides the name specified for the trust in its organic documents or, if no

1 name is specified, provides the name of the settlor and additional information
2 sufficient to distinguish the debtor from other trusts having one or more of the
3 same settlors; and

4 (B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a
5 trustee acting with respect to property held in trust; and

6 (4) in other cases:

7 (A) if the debtor has a name, only if it provides the individual or organizational
8 name of the debtor; and

9 (B) if the debtor does not have a name, only if it provides the names of the
10 partners, members, associates, or other persons comprising the debtor.

11 (b) A financing statement that provides the name of the debtor in accordance with subsection

12 (a) is not rendered ineffective by the absence of:

13 (1) a trade name or other name of the debtor; or

14 (2) unless required under subsection (a)(4)(B), names of partners, members, associates,
15 or other persons comprising the debtor.

16 (c) A financing statement that provides only the debtor's trade name does not sufficiently
17 provide the name of the debtor.

18 (d) Failure to indicate the representative capacity of a secured party or representative of a
19 secured party does not affect the sufficiency of a financing statement.

20 (e) A financing statement may provide the name of more than one debtor and the name of
21 more than one secured party.

22 Section 9-504. A financing statement sufficiently indicates the collateral that it covers if the
23 financing statement provides:

24 (1) a description of the collateral pursuant to Section 9-108; or

25 (2) an indication that the financing statement covers all assets or all personal property.

1 Section 9-505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
2 payment intangible or promissory note may file a financing statement, or may comply with a
3 statute or treaty described in Section 9-311(a), using the terms "consignor", "consignee",
4 "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer",
5 "seller", or words of similar import, instead of the terms "secured party" and "debtor".

6 (b) This part applies to the filing of a financing statement under subsection (a) and, as
7 appropriate, to compliance that is equivalent to filing a financing statement under Section
8 9-311(b), but the filing or compliance is not of itself a factor in determining whether the
9 collateral secures an obligation. If it is determined for another reason that the collateral secures
10 an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer
11 which attaches to the collateral is perfected by the filing or compliance.

12 Section 9-506. (a) A financing statement substantially satisfying the requirements of this part
13 is effective, even if it has minor errors or omissions, unless the errors or omissions make the
14 financing statement seriously misleading.

15 (b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently
16 to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.

17 (c) If a search of the records of the filing office under the debtor's correct name, using the
18 filing office's standard search logic, if any, would disclose a financing statement that fails
19 sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name
20 provided does not make the financing statement seriously misleading.

21 (d) For purposes of Section 9-508(b), the "debtor's correct name" in subsection (c) means
22 the correct name of the new debtor.

23 Section 9-507. (a) A filed financing statement remains effective with respect to collateral that
24 is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or
25 agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Section 9-508. (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

1 (c) This section does not apply to collateral as to which a filed financing statement remains
2 effective against the new debtor under Section 9-507(a).

3 Section 9-509. (a) A person may file an initial financing statement, amendment that adds
4 collateral covered by a financing statement, or amendment that adds a debtor to a financing
5 statement only if:

6 (1) the debtor authorizes the filing in an authenticated record or pursuant to subsection
7 (b) or (c); or

8 (2) the person holds an agricultural lien that has become effective at the time of filing and
9 the financing statement covers only collateral in which the person holds an agricultural
10 lien.

11 (b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new
12 debtor authorizes the filing of an initial financing statement, and an amendment, covering:

13 (1) the collateral described in the security agreement; and

14 (2) property that becomes collateral under Section 9-315(a)(2), whether or not the
15 security agreement expressly covers proceeds.

16 (c) By acquiring collateral in which a security interest or agricultural lien continues under
17 Section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an
18 amendment, covering the collateral and property that becomes collateral under Section 9-
19 315(a)(2).

20 (d) A person may file an amendment other than an amendment that adds collateral covered
21 by a financing statement or an amendment that adds a debtor to a financing statement only if:

22 (1) the secured party of record authorizes the filing; or

23 (2) the amendment is a termination statement for a financing statement as to which the
24 secured party of record has failed to file or send a termination statement as required
25 by Section 9-513(a) or (c), the debtor authorizes the filing, and the termination

1 statement indicates that the debtor authorized it to be filed.

2 (e) If there is more than one secured party of record for a financing statement, each secured
3 party of record may authorize the filing of an amendment under subsection (d).

4 Section 9-510. (a) A filed record is effective only to the extent that it was filed by a person
5 that may file it under Section 9-509.

6 (b) A record authorized by one secured party of record does not affect the financing
7 statement with respect to another secured party of record.

8 (c) A continuation statement that is not filed within the six-month period prescribed by
9 Section 9-515(d) is ineffective.

10 Section 9-511. (a) A secured party of record with respect to a financing statement is a person
11 whose name is provided as the name of the secured party or a representative of the secured party
12 in an initial financing statement that has been filed. If an initial financing statement is filed under
13 Section 9-514(a), the assignee named in the initial financing statement is the secured party of
14 record with respect to the financing statement.

15 (b) If an amendment of a financing statement which provides the name of a person as a
16 secured party or a representative of a secured party is filed, the person named in the amendment
17 is a secured party of record. If an amendment is filed under Section 9-514(b), the assignee named
18 in the amendment is a secured party of record.

19 (c) A person remains a secured party of record until the filing of an amendment of the
20 financing statement which deletes the person.

21 Section 9-512. (a) Subject to Section 9-509, a person may add or delete collateral covered
22 by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the
23 information provided in, a financing statement by filing an amendment that:

24 (1) identifies, by its file number, the initial financing statement to which the amendment
25 relates and either the social security number or internal revenue service taxpayer

1 identification number of the debtor; and

2 (2) if the amendment relates to an initial financing statement filed or recorded in a filing
3 office described in Section 9-501(a)(1), provides the date and time that the initial
4 financing statement was filed or recorded and the information specified in Section 9-
5 502(b).

6 (b) Except as otherwise provided in Section 9-515, the filing of an amendment does not
7 extend the period of effectiveness of the financing statement.

8 (c) A financing statement that is amended by an amendment that adds collateral is effective
9 as to the added collateral only from the date of the filing of the amendment.

10 (d) A financing statement that is amended by an amendment that adds a debtor is effective as to
11 the added debtor only from the date of the filing of the amendment.

12 (e) An amendment is ineffective to the extent it:

13 (1) purports to delete all debtors and fails to provide the name of a debtor to be covered
14 by the financing statement; or

15 (2) purports to delete all secured parties of record and fails to provide the name of a new
16 secured party of record.

17 Section 9-513. (a) A secured party shall cause the secured party of record for a financing
18 statement to file a termination statement for the financing statement if the financing statement
19 covers consumer goods and:

20 (1) there is no obligation secured by the collateral covered by the financing statement and
21 no commitment to make an advance, incur an obligation, or otherwise give value; or

22 (2) the debtor did not authorize the filing of the initial financing statement.

23 (b) To comply with subsection (a), a secured party shall cause the secured party of record
24 to file the termination statement:

25 (1) within one month after there is no obligation secured by the collateral covered by the

1 financing statement and no commitment to make an advance, incur an obligation, or
2 otherwise give value; or

3 (2) if earlier, within 20 days after the secured party receives an authenticated demand
4 from a debtor.

5 (c) In cases not governed by subsection (a), within 20 days after a secured party receives an
6 authenticated demand from a debtor, the secured party shall cause the secured party of record
7 for a financing statement to send to the debtor a termination statement for the financing
8 statement or file the termination statement in the filing office if:

9 (1) except in the case of a financing statement covering accounts or chattel paper that has
10 been sold or goods that are the subject of a consignment, there is no obligation
11 secured by the collateral covered by the financing statement and no commitment to
12 make an advance, incur an obligation, or otherwise give value;

13 (2) the financing statement covers accounts or chattel paper that has been sold but as to
14 which the account debtor or other person obligated has discharged its obligation;

15 (3) the financing statement covers goods that were the subject of a consignment to the
16 debtor but are not in the debtor's possession; or

17 (4) the debtor did not authorize the filing of the initial financing statement.

18 (d) Except as otherwise provided in Section 9-510, upon the filing of a termination statement
19 with the filing office, the financing statement to which the termination statement relates ceases
20 to be effective. Except as otherwise provided in Section 9-510, for purposes of Sections 9-
21 519(g), 9-522(a), and 9-523(c), the filing with the filing office of a termination statement relating
22 to a financing statement that indicates that the debtor is a transmitting utility also causes the
23 effectiveness of the financing statement to lapse.

24 Section 9-514. (a) Except as otherwise provided in subsection (c), an initial financing
25 statement may reflect an assignment of all of the secured party's power to authorize an

1 amendment to the financing statement by providing the name and mailing address of the assignee
2 as the name and address of the secured party.

3 (b) Except as otherwise provided in subsection (c), a secured party of record may assign of
4 record all or part of its power to authorize an amendment to a financing statement by filing in
5 the filing office an amendment of the financing statement which:

6 (1) identifies, by its file number, the initial financing statement to which it relates;

7 (2) provides the name of the assignor; and

8 (3) provides the name and mailing address of the assignee.

9 (c) An assignment of record of a security interest in a fixture covered by a record of a
10 mortgage which is effective as a financing statement filed as a fixture filing under Section
11 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided
12 by law of this State other than the Uniform Commercial Code.

13 Section 9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed
14 financing statement is effective for a period of five years after the date of filing.

15 Financing statements filed before July 1, 1997, are effective for a period of five years from
16 the date of filing and thereafter for a period of 60 days.

17 The expiration date established by a financing statement filed prior to July 1, 1997, whether
18 or not continued by a continuation statement shall remain in full force and effect and is not
19 diminished by any subsequent amendments to this Act.

20 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement
21 filed in connection with a public-finance transaction or manufactured-home transaction is
22 effective for a period of 30 years after the date of filing if it indicates that it is filed in connection
23 with a public-finance transaction or manufactured-home transaction.

24 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of
25 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection

1 (d). Upon lapse, a financing statement ceases to be effective and any security interest or
2 agricultural lien that was perfected by the financing statement becomes unperfected, unless the
3 security interest is perfected otherwise. If the security interest or agricultural lien becomes
4 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the
5 collateral for value.

6 (d) A continuation statement may be filed only within six months before the expiration of the
7 five-year period specified in subsection (a) or the 30-year period specified in subsection (b),
8 whichever is applicable.

9 However, for financing statements filed before July 1, 1997, a continuation statement may
10 be filed within six months before and 60 days after the expiration of the five-year period.

11 (e) Except as otherwise provided in Section 9-510, upon timely filing of a continuation
12 statement, the effectiveness of the initial financing statement continues for a period of five years
13 commencing on the day on which the financing statement would have become ineffective in the
14 absence of the filing. Upon the expiration of the five-year period, the financing statement lapses
15 in the same manner as provided in subsection (c), unless, before the lapse, another continuation
16 statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed
17 in the same manner to continue the effectiveness of the initial financing statement.

18 (f) If a debtor is a transmitting utility and a filed financing statement so indicates, the
19 financing statement is effective until a termination statement is filed.

20 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing
21 under Section 9-502(c) remains effective as a financing statement filed as a fixture filing until the
22 mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real
23 property.

24 Section 9-516. (a) Except as otherwise provided in subsection (b), communication of a
25 record to a filing office and tender of the filing fee or acceptance of the record by the filing office

constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed or recorded in the filing office described in Section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

1 (5) in the case of an initial financing statement or an amendment that provides a name of
2 a debtor which was not previously provided in the financing statement to which the
3 amendment relates, the record does not:

4 (A) provide a mailing address for the debtor;

5 (B) indicate whether the debtor is an individual or an organization; or

6 (C) if the financing statement indicates that the debtor is an organization, provide:

7 (i) a type of organization for the debtor;

8 (ii) a jurisdiction of organization for the debtor; or

9 (iii) an organizational identification number for the debtor or indicate that
10 the debtor has none;

11 (6) in the case of an assignment reflected in an initial financing statement under Section
12 9-514(a) or an amendment filed under Section 9-514(b), the record does not provide
13 a name and mailing address for the assignee; or

14 (7) in the case of a continuation statement, the record is not filed within the six-month
15 period prescribed by Section 9-515(d).

16 (c) For purposes of subsection (b):

17 (1) a record does not provide information if the filing office is unable to read or decipher
18 the information; and

19 (2) a record that does not indicate that it is an amendment or identify an initial financing
20 statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an
21 initial financing statement.

22 (d) A record that is communicated to the filing office with tender of the filing fee, but which
23 the filing office refuses to accept for a reason other than one set forth in subsection (b), is
24 effective as a filed record except as against a purchaser of the collateral which gives value in
25 reasonable reliance upon the absence of the record from the files.

1 Section 9-517. The failure of the filing office to index a record correctly does not affect the
2 effectiveness of the filed record.

3 Section 9-518. (a) A person may file in the filing office a correction statement with respect
4 to a record indexed there under the person's name if the person believes that the record is
5 inaccurate or was wrongfully filed.

6 (b) A correction statement must:

7 (1) identify the record to which it relates by:

8 (A) the file number assigned to the initial financing statement to which the record
9 relates; and

10 (B) if the correction statement relates to a record filed or recorded in a filing office
11 described in Section 9-501(a)(1), the date and time that the initial financing
12 statement was filed or recorded and the information specified in Section 9-
13 502(b);

14 (2) indicate that it is a correction statement; and

15 (3) provide the basis for the person's belief that the record is inaccurate and indicate the
16 manner in which the person believes the record should be amended to cure any
17 inaccuracy or provide the basis for the person's belief that the record was wrongfully
18 filed.

19 (c) The filing of a correction statement does not affect the effectiveness of an initial financing
20 statement or other filed record.

21 Section 9-519. (a) For each record filed in a filing office, the filing office shall:

22 (1) assign a unique number to the filed record;

23 (2) create a record that bears the number assigned to the filed record and the date and
24 time of filing;

25 (3) maintain the filed record for public inspection; and

1 (4) index the filed record in accordance with subsections (c), (d), and (e).

2 (b) A file number assigned after July 1, 2001, must include a digit that:

3 (1) is mathematically derived from or related to the other digits of the file number; and

4 (2) aids the filing office in determining whether a number communicated as the file
5 number includes a single-digit or transpositional error.

6 (c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

7 (1) index an initial financing statement according to the name of the debtor and index all
8 filed records relating to the initial financing statement in a manner that associates with
9 one another an initial financing statement and all filed records relating to the initial
10 financing statement; and

11 (2) index a record that provides a name of a debtor which was not previously provided
12 in the financing statement to which the record relates also according to the name that
13 was not previously provided.

14 (d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or
15 timber to be cut, it must be filed for record and the filing office shall index it:

16 (1) under the names of the debtor and of each owner of record shown on the financing
17 statement as if they were the mortgagors under a mortgage of the real property
18 described; and

19 (2) to the extent that the law of this State provides for indexing of records of mortgages
20 under the name of the mortgagee, under the name of the secured party as if the
21 secured party were the mortgagee thereunder, or, if indexing is by description, as if
22 the financing statement were a record of a mortgage of the real property described.

23 (e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or
24 timber to be cut, the filing office shall index an assignment filed under Section 9-514(a) or an
25 amendment filed under Section 9-514(b):

1 (1) under the name of the assignor as grantor; and

2 (2) to the extent that the law of this State provides for indexing a record of the
3 assignment of a mortgage under the name of the assignee, under the name of the
4 assignee.

5 (f) The filing office shall maintain a capability:

6 (1) to retrieve a record by the name of the debtor and:

7 (A) if the filing office is described in Section 9-501(a)(1), by the file number
8 assigned to the initial financing statement to which the record relates and the
9 date and time that the record was filed or recorded; or

10 (B) if the filing office is described in Section 9-501(a)(2), by the file number
11 assigned to the initial financing statement to which the record relates; and

12 (2) to associate and retrieve with one another an initial financing statement and each filed
13 record relating to the initial financing statement.

14 (g) The filing office may not remove a debtor's name from the index until one year after the
15 effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect
16 to all secured parties of record.

17 (h) The filing office shall perform the acts required by subsections (a) through (e) at the time
18 and in the manner prescribed by filing-office rule, but not later than two business days after the
19 filing office receives the record in question.

20 (i) Subsections (b) and (h) do not apply to a filing office described in Section 9-501(a)(1).

21 Section 9-520. (a) A filing office shall refuse to accept a record for filing for a reason set
22 forth in Section 9-516(b) and may refuse to accept a record for filing only for a reason set forth
23 in Section 9-516(b).

24 (b) If a filing office refuses to accept a record for filing, it shall communicate to the person
25 that presented the record the fact of and reason for the refusal and the date and time the record

1 would have been filed had the filing office accepted it. The communication must be made at the
2 time and in the manner prescribed by filing-office rule but, in the case of a filing office described
3 in Section 9-501(a)(2), in no event more than two business days after the filing office receives
4 the record.

5 (c) A filed financing statement satisfying Section 9-502(a) and (b) is effective, even if the
6 filing office is required to refuse to accept it for filing under subsection (a). However, Section
7 9-338 applies to a filed financing statement providing information described in Section 9-
8 516(b)(5) which is incorrect at the time the financing statement is filed.

9 (d) If a record communicated to a filing office provides information that relates to more than
10 one debtor, this part applies as to each debtor separately.

11 Section 9-521. (a) A filing office that accepts written records may not refuse to accept a
12 written initial financing statement in the following form and format except for a reason set forth
13 in Section 9-516(b):

14 _____

15 (b) A filing office that accepts written records may not refuse to accept a written record in
16 the following form and format except for a reason set forth in Section 9-516(b):

17 _____

18 Section 9-522. (a) The filing office shall maintain a record of the information provided in a
19 filed financing statement for at least one year after the effectiveness of the financing statement
20 has lapsed under Section 9-515 with respect to all secured parties of record. The record must
21 be retrievable by using the name of the debtor and:

- 22 (1) if the record was filed or recorded in the filing office described in Section 9-501(a)(1),
23 by using the file number assigned to the initial financing statement to which the record
24 relates and the date and time that the record was filed or recorded; or

- 25 (2) if the record was filed in the filing office described in Section 9-501(a)(2), by using

1 the file number assigned to the initial financing statement to which the record relates.

2 (b) Except to the extent that a statute governing disposition of public records provides
3 otherwise, the filing office immediately may destroy any written record evidencing a financing
4 statement. However, if the filing office destroys a written record, it shall maintain another record
5 of the financing statement which complies with subsection (a).

6 Section 9-523. (a) If a person that files a written record requests an acknowledgment of the
7 filing, the filing office shall send to the person an image of the record showing the number
8 assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the
9 record. However, if the person furnishes a copy of the record to the filing office, the filing office
10 may instead:

- 11 (1) note upon the copy the number assigned to the record pursuant to Section
12 9-519(a)(1) and the date and time of the filing of the record; and
13 (2) send the copy to the person.

14 (b) If a person files a record other than a written record, the filing office shall communicate
15 to the person an acknowledgment that provides:

- 16 (1) the information in the record;
17 (2) the number assigned to the record pursuant to Section 9-519(a)(1); and
18 (3) the date and time of the filing of the record.

19 (c) The filing office shall communicate or otherwise make available in a record the following
20 information to any person that requests it:

- 21 (1) whether there is on file on a date and time specified by the filing office, but not a date
22 earlier than three business days before the filing office receives the request, any
23 financing statement that:
24 (A) designates a particular debtor or, if the request so states, designates a particular
25 debtor at the address specified in the request;

1 (B) has not lapsed under Section 9-515 with respect to all secured parties of
2 record; and

3 (C) if the request so states, has lapsed under Section 9-515 and a record of which
4 is maintained by the filing office under Section 9-522(a);

5 (2) the date and time of filing of each financing statement; and

6 (3) the information provided in each financing statement.

7 (d) In complying with its duty under subsection (c), the filing office may communicate
8 information in any medium. However, if requested, the filing office shall communicate
9 information by issuing a record that can be admitted into evidence in the courts of this State
10 without extrinsic evidence of its authenticity.

11 A computer printout from the centralized computer system established by the secretary of
12 state constitutes the certificate of the secretary of state as to whether there is on file, on the date
13 and hour stated thereon, a financing statement covering the following collateral: farm products
14 or accounts, or livestock, or general intangibles arising from or relating to the sale of farm
15 products by a farmer, or crops growing or to be grown, or equipment used in farming operations.

16 The secretary of state shall, upon a telephone request, furnish to any person, company, or
17 corporation, information as to whether a financing statement describing farm collateral has been
18 filed in the office of the secretary of state and, if such financing statement has been filed, the
19 secretary of state shall also furnish the name and business address of the secured creditor.
20 However, the secretary of state need not answer telephone inquiries in writing nor send written
21 confirmation from a telephone request. The secretary of state is not responsible for accuracy and
22 completeness of the information furnished verbally in response to a telephone request. The
23 secretary of state shall provide a toll-free telephone number to provide access for telephone
24 requests.

25 (e) The filing office shall perform the acts required by subsections (a) through (d) at the time

1 and in the manner prescribed by filing-office rule, but not later than two business days after the
2 filing office receives the request.

3 Section 9-524. Delay by the filing office beyond a time limit prescribed by this part is excused
4 if:

- 5 (1) the delay is caused by interruption of communication or computer facilities, war,
6 emergency conditions, failure of equipment, or other circumstances beyond control
7 of the filing office; and
8 (2) the filing office exercises reasonable diligence under the circumstances.

9 Section 9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and
10 indexing a record under this part, other than an initial financing statement of the kind described
11 in subsection (b), is [the amount specified in subsection (c), if applicable, plus]:

- 12 (1) \$ __[X]_____ if the record is communicated in writing and consists of one or two
13 pages;
14 (2) \$ __[2X]_____ if the record is communicated in writing and consists of more than
15 two pages; and
16 (3) \$ __[1/2X]___ if the record is communicated by another medium authorized by filing-
17 office rule.

18 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial
19 financing statement of the following kind is [the amount specified in subsection (c), if applicable,
20 plus]:

- 21 (1) \$ _____ if the financing statement indicates that it is filed in connection with a public-
22 finance transaction;
23 (2) \$ _____ if the financing statement indicates that it is filed in connection with a
24 manufactured-home transaction.

1 (c) The number of names required to be indexed does not affect the amount of the fee in
2 subsections (a) and (b).

3 [Alternative B]

4 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing,
5 the fee for each name more than two required to be indexed is \$ ____.

6 (d) The fee for responding to a request for information from the filing office, including for
7 [issuing a certificate showing] [communicating] whether there is on file any financing statement
8 naming a particular debtor, is:

9 (1) \$ ____ if the request is communicated in writing; and

10 (2) \$ ____ if the request is communicated by another medium authorized by filing-office
11 rule.

12 (e) This section does not require a fee with respect to a record of a mortgage which is
13 effective as a financing statement filed as a fixture filing or as a financing statement covering as-
14 extracted collateral or timber to be cut under Section 9-502(c). However, the recording and
15 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

16 Section 9-525.1. For the purposes of former § 57A-9-401, a filing made in the county office
17 of register of deeds prior to July 1, 1986, which has not lapsed prior to July 1, 1986, shall remain
18 effective for the period provided by this title. Any continuation of or amendment to such filing
19 shall be made with the secretary of state. Such central filing shall be accompanied by a certified
20 copy of the original filed financing statement.

21 Section 9-525.2. The secretary of state may promulgate all necessary regulations under the
22 provisions of chapter 1-26 to implement a central filing system for filing financing statements.

23 Section 9-525.3. The secretary of state may adopt rules concerning the operation of the
24 central agricultural security interest computer filing system, prescribing such matters as format
25 for data and the type of information to be recorded from the financing statement.

1 Section 9-525.4. There is hereby created, within the state treasury, the financing statement
2 filing fee fund, which is continuously appropriated, to provide funds for the operation of the
3 uniform commercial code program within the office of the secretary of state.

4 Section 9-525.5. For each effective financing statement filed pursuant to this chapter, three
5 dollars of the fee collected pursuant to Section _____, and the computer search fee assessed
6 pursuant to Section _____, shall be deposited in the financing statement filing fee fund.

7 Section 9-525.6. At the end of each fiscal year, any funds in the financing statement filing fee
8 fund, not otherwise appropriated, in excess of twenty-five thousand dollars, shall revert to the
9 general fund.

10 Section 9-526. (a) The secretary of state shall adopt rules to implement this article. The
11 filing-office rules must be:

12 (1) consistent with this article; and

13 (2) adopted and published in accordance with chapter 1-26.

14 (b) To keep the filing-office rules and practices of the filing office in harmony with the rules
15 and practices of filing offices in other jurisdictions that enact substantially this part, and to keep
16 the technology used by the filing office compatible with the technology used by filing offices in
17 other jurisdictions that enact substantially this part, the secretary of state's office, so far as is
18 consistent with the purposes, policies, and provisions of this article, in adopting, amending, and
19 repealing filing-office rules, shall:

20 (1) consult with filing offices in other jurisdictions that enact substantially this part; and

21 (2) consult the most recent version of the Model Rules promulgated by the International
22 Association of Corporate Administrators or any successor organization; and

23 (3) take into consideration the rules and practices of, and the technology used by, filing
24 offices in other jurisdictions that enact substantially this part.

25 Section 9-601. (a) After default, a secured party has the rights provided in this part and,

except as otherwise provided in Section 9-602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 9-104, 9-105, 9-106, or 9-107 has the rights and duties provided in Section 9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and Section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in Section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 9-602. Except as otherwise provided in Section 9-624, to the extent that they give

rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Section 9-607(c), which deals with collection and enforcement of collateral;
- (4) Sections 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;
- (8) Section 9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) Section 9-623, which deals with redemption of collateral;
- (12) Section 9-624, which deals with permissible waivers; and
- (13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this article.

1 Section 9-603. (a) The parties may determine by agreement the standards measuring the
2 fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule
3 stated in Section 9-602 if the standards are not manifestly unreasonable.

4 (b) Subsection (a) does not apply to the duty under Section 9-609 to refrain from breaching
5 the peace.

6 Section 9-604. (a) If a security agreement covers both personal and real property, a secured
7 party may proceed:

8 (1) under this part as to the personal property without prejudicing any rights with respect
9 to the real property; or

10 (2) as to both the personal property and the real property in accordance with the rights
11 with respect to the real property, in which case the other provisions of this part do not
12 apply.

13 (b) Subject to subsection (c), if a security agreement covers goods that are or become
14 fixtures, a secured party may proceed:

15 (1) under this part; or

16 (2) in accordance with the rights with respect to real property, in which case the other
17 provisions of this part do not apply.

18 (c) Subject to the other provisions of this part, if a secured party holding a security interest
19 in fixtures has priority over all owners and encumbrancers of the real property, the secured party,
20 after default, may remove the collateral from the real property.

21 (d) A secured party that removes collateral shall promptly reimburse any encumbrancer or
22 owner of the real property, other than the debtor, for the cost of repair of any physical injury
23 caused by the removal. The secured party need not reimburse the encumbrancer or owner for any
24 diminution in value of the real property caused by the absence of the goods removed or by any
25 necessity of replacing them. A person entitled to reimbursement may refuse permission to

1 remove until the secured party gives adequate assurance for the performance of the obligation
2 to reimburse.

3 Section 9-605. A secured party does not owe a duty based on its status as secured party:

4 (1) to a person that is a debtor or obligor, unless the secured party knows:

5 (A) that the person is a debtor or obligor;

6 (B) the identity of the person; and

7 (C) how to communicate with the person; or

8 (2) to a secured party or lienholder that has filed a financing statement against a person,
9 unless the secured party knows:

10 (A) that the person is a debtor; and

11 (B) the identity of the person.

12 Section 9-606. For purposes of this part, a default occurs in connection with an agricultural
13 lien at the time the secured party becomes entitled to enforce the lien in accordance with the
14 statute under which it was created.

15 Section 9-607. (a) If so agreed, and in any event after default, a secured party:

16 (1) may notify an account debtor or other person obligated on collateral to make payment
17 or otherwise render performance to or for the benefit of the secured party;

18 (2) may take any proceeds to which the secured party is entitled under Section 9-315;

19 (3) may enforce the obligations of an account debtor or other person obligated on
20 collateral and exercise the rights of the debtor with respect to the obligation of the
21 account debtor or other person obligated on collateral to make payment or otherwise
22 render performance to the debtor, and with respect to any property that secures the
23 obligations of the account debtor or other person obligated on the collateral;

24 (4) if it holds a security interest in a deposit account perfected by control under Section
25 9-104(a)(1), may apply the balance of the deposit account to the obligation secured

1 by the deposit account; and

2 (5) if it holds a security interest in a deposit account perfected by control under Section
3 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account
4 to or for the benefit of the secured party.

5 (b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a
6 debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which
7 a record of the mortgage is recorded:

8 (1) a copy of the security agreement that creates or provides for a security interest in the
9 obligation secured by the mortgage; and

10 (2) the secured party's sworn affidavit in recordable form stating that:

11 (A) a default has occurred; and

12 (B) the secured party is entitled to enforce the mortgage nonjudicially.

13 (c) A secured party shall proceed in a commercially reasonable manner if the secured party:

14 (1) undertakes to collect from or enforce an obligation of an account debtor or other
15 person obligated on collateral; and

16 (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse
17 against the debtor or a secondary obligor.

18 (d) A secured party may deduct from the collections made pursuant to subsection (c)
19 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal
20 expenses incurred by the secured party.

21 (e) This section does not determine whether an account debtor, bank, or other person
22 obligated on collateral owes a duty to a secured party.

23 Section 9-608. (a) If a security interest or agricultural lien secures payment or performance
24 of an obligation, the following rules apply:

25 (1) A secured party shall apply or pay over for application the cash proceeds of collection

or enforcement under Section 9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Section 9-609. (a) After default, a secured party:

1 (1) may take possession of the collateral; and

2 (2) without removal, may render equipment unusable and dispose of collateral on a
3 debtor's premises under Section 9-610.

4 (b) A secured party may proceed under subsection (a):

5 (1) pursuant to judicial process; or

6 (2) without judicial process, if it proceeds without breach of the peace.

7 (c) If so agreed, and in any event after default, a secured party may require the debtor to
8 assemble the collateral and make it available to the secured party at a place to be designated by
9 the secured party which is reasonably convenient to both parties.

10 Section 9-609.1. No cause of action for recovery of security or its value may be commenced
11 by a secured creditor against an innocent third-party purchaser of farm products as defined in
12 subsection (34) of Section 9-102, nor may such a cause of action be commenced against a
13 livestock auction agency, as defined in chapter 40-15 and § 301 of the Packers and Stockyards
14 Act (7 USC 201), or a public grain warehouse, or a public terminal grain warehouse, or a grain
15 dealer as defined by chapters 49-43, 49-44, and 49-45 respectively, unless such action is
16 commenced within twenty-four months from the date the farm products are sold and unless such
17 action is preceded by the secured creditor offering to file against the debtor, a complaint as
18 defined by § 23A-2-1.

19 Section 9-609.2. Any person who for himself, or through an agent, sells livestock through
20 a livestock auction agency, as defined in chapter 40-15 and § 301 of the Packers and Stockyards
21 Act (7 USC 201), or who so sells grain through a public grain warehouse, or through a public
22 terminal grain warehouse, or a grain dealer as defined in chapters 49-43, 49-44, and 49-45
23 respectively, without notifying the livestock auction agency or the grain warehouse or grain
24 dealer of a security interest in such farm products, and with intent to defraud, is guilty of farm
25 products fraud. The failure of the seller to give written notice of a security interest in the farm

1 products prior to the date of the sale by the livestock auction agency, or the grain warehouse,
2 or grain dealer, is prima facie evidence of intent to defraud.

3 A violation of this section is a Class 1 misdemeanor.

4 Section 9-610. (a) After default, a secured party may sell, lease, license, or otherwise dispose
5 of any or all of the collateral in its present condition or following any commercially reasonable
6 preparation or processing.

7 (b) Every aspect of a disposition of collateral, including the method, manner, time, place, and
8 other terms, must be commercially reasonable. If commercially reasonable, a secured party may
9 dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in
10 parcels, and at any time and place and on any terms.

11 (c) A secured party may purchase collateral:

12 (1) at a public disposition; or

13 (2) at a private disposition only if the collateral is of a kind that is customarily sold on a
14 recognized market or the subject of widely distributed standard price quotations.

15 (d) A contract for sale, lease, license, or other disposition includes the warranties relating to
16 title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary
17 disposition of property of the kind subject to the contract.

18 (e) A secured party may disclaim or modify warranties under subsection (d):

19 (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary
20 disposition of property of the kind subject to the contract of disposition; or

21 (2) by communicating to the purchaser a record evidencing the contract for disposition
22 and including an express disclaimer or modification of the warranties.

23 (f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is
24 no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses
25 words of similar import.

Section 9-611. (a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

1 (d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily
2 in value or is of a type customarily sold on a recognized market.

3 (e) A secured party complies with the requirement for notification prescribed by subsection
4 (c)(3)(B) if:

5 (1) not later than 20 days or earlier than 30 days before the notification date, the secured
6 party requests, in a commercially reasonable manner, information concerning
7 financing statements indexed under the debtor's name in the office indicated in
8 subsection (c)(3)(B); and

9 (2) before the notification date, the secured party:

10 (A) did not receive a response to the request for information; or

11 (B) received a response to the request for information and sent an authenticated
12 notification of disposition to each secured party or other lienholder named in
13 that response whose financing statement covered the collateral.

14 Section 9-612. (a) Except as otherwise provided in subsection (b), whether a notification is
15 sent within a reasonable time is a question of fact.

16 (b) In a transaction other than a consumer transaction, a notification of disposition sent after
17 default and 10 days or more before the earliest time of disposition set forth in the notification is
18 sent within a reasonable time before the disposition.

19 Section 9-613. Except in a consumer-goods transaction, the following rules apply:

20 (1) The contents of a notification of disposition are sufficient if the notification:

21 (A) describes the debtor and the secured party;

22 (B) describes the collateral that is the subject of the intended disposition;

23 (C) states the method of intended disposition;

24 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness
25 and states the charge, if any, for an accounting; and

1 (E) states the time and place of a public disposition or the time after which any
2 other disposition is to be made.

3 (2) Whether the contents of a notification that lacks any of the information specified in
4 paragraph (1) are nevertheless sufficient is a question of fact.

5 (3) The contents of a notification providing substantially the information specified in
6 paragraph (1) are sufficient, even if the notification includes:

7 (A) information not specified by that paragraph; or

8 (B) minor errors that are not seriously misleading.

9 (4) A particular phrasing of the notification is not required.

10 (5) The following form of notification and the form appearing in Section 9-614(3), when
11 completed, each provides sufficient information:

12 NOTIFICATION OF DISPOSITION OF COLLATERAL

13 To: [Name of debtor, obligor, or other person to which the notification is sent]

14 From: [Name, address, and telephone number of secured party]

15 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

16 [For a public disposition:]

17 We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest
18 qualified bidder] in public as follows:

19 Day and Date: _____

20 Time: _____

21 Place: _____

22 [For a private disposition:]

23 We will sell [or lease or license, *as applicable*] the [describe collateral] privately
24 sometime after [day and date].

25 You are entitled to an accounting of the unpaid indebtedness secured by the property that

1 we intend to sell [or lease or license, *as applicable*] [for a charge of \$ _____]. You may
2 request an accounting by calling us at [telephone number]

3 Section 9-614. In a consumer-goods transaction, the following rules apply:

4 (1) A notification of disposition must provide the following information:

5 (A) the information specified in Section 9-613(1);

6 (B) a description of any liability for a deficiency of the person to which the
7 notification is sent;

8 (C) a telephone number from which the amount that must be paid to the secured
9 party to redeem the collateral under Section 9-623 is available; and

10 (D) a telephone number or mailing address from which additional information
11 concerning the disposition and the obligation secured is available.

12 (2) A particular phrasing of the notification is not required.

13 (3) The following form of notification, when completed, provides sufficient information:

14 [Name and address of secured party]

15 [Date]

16 NOTICE OF OUR PLAN TO SELL PROPERTY

17 [Name and address of any obligor who is also a debtor]

18 Subject: [Identification of Transaction]

19 We have your [describe collateral], because you broke promises in our agreement.

20 [For a public disposition:]

21 We will sell [describe collateral] at public sale. A sale could include a lease or license.

22 The sale will be held as follows:

23 Date: _____

24 Time: _____

25 Place: _____

1 You may attend the sale and bring bidders if you want.

2 *[For a private disposition:]*

3 We will sell *[describe collateral]* at private sale sometime after *[date]* . A sale could
4 include a lease or license.

5 The money that we get from the sale (after paying our costs) will reduce the amount you owe.

6 If we get less money than you owe, you *[will or will not, as applicable]* still owe us the
7 difference. If we get more money than you owe, you will get the extra money, unless we must
8 pay it to someone else.

9 You can get the property back at any time before we sell it by paying us the full amount you owe
10 (not just the past due payments), including our expenses. To learn the exact amount you must
11 pay, call us at *[telephone number]* .

12 If you want us to explain to you in writing how we have figured the amount that you owe us,
13 you may call us at *[telephone number]* [or write us at *[secured party's address]*]
14 and request a written explanation. [We will charge you \$ for the explanation if we sent
15 you another written explanation of the amount you owe us within the last six months.]

16 If you need more information about the sale call us at *[telephone number]* [or write us
17 at *[secured party's address]*].

18 We are sending this notice to the following other people who have an interest in *[describe*
19 *collateral]* or who owe money under your agreement:

20 *[Names of all other debtors and obligors, if any]*

21 (4) A notification in the form of paragraph (3) is sufficient, even if additional information
22 appears at the end of the form.

23 (5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in
24 information not required by paragraph (1), unless the error is misleading with respect
25 to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

Section 9-615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9-610 unless the failure to do so would be commercially unreasonable.

1 A secured party that applies or pays over for application noncash proceeds shall do so in a
2 commercially reasonable manner.

3 (d) If the security interest under which a disposition is made secures payment or performance
4 of an obligation, after making the payments and applications required by subsection (a) and
5 permitted by subsection (c):

6 (1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds
7 to a consignor, the secured party shall account to and pay a debtor for any surplus;
8 and

9 (2) the obligor is liable for any deficiency.

10 (e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or
11 promissory notes:

12 (1) the debtor is not entitled to any surplus; and

13 (2) the obligor is not liable for any deficiency.

14 (f) The surplus or deficiency following a disposition is calculated based on the amount of
15 proceeds that would have been realized in a disposition complying with this part to a transferee
16 other than the secured party, a person related to the secured party, or a secondary obligor if:

17 (1) the transferee in the disposition is the secured party, a person related to the secured
18 party, or a secondary obligor; and

19 (2) the amount of proceeds of the disposition is significantly below the range of proceeds
20 that a complying disposition to a person other than the secured party, a person related
21 to the secured party, or a secondary obligor would have brought.

22 (g) A secured party that receives cash proceeds of a disposition in good faith and without
23 knowledge that the receipt violates the rights of the holder of a security interest or other lien that
24 is not subordinate to the security interest or agricultural lien under which the disposition is made:

25 (1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 9-616. (a) In this section:

(1) "Explanation" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

1 (B) within 14 days after receipt of a request; or

2 (2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after
3 receipt of a request, send to the consumer obligor a record waiving the secured
4 party's right to a deficiency.

5 (c) To comply with subsection (a)(1)(B), a writing must provide the following information
6 in the following order:

7 (1) the aggregate amount of obligations secured by the security interest under which the
8 disposition was made, and, if the amount reflects a rebate of unearned interest or
9 credit service charge, an indication of that fact, calculated as of a specified date:

10 (A) if the secured party takes or receives possession of the collateral after default,
11 not more than 35 days before the secured party takes or receives possession;
12 or

13 (B) if the secured party takes or receives possession of the collateral before default
14 or does not take possession of the collateral, not more than 35 days before the
15 disposition;

16 (2) the amount of proceeds of the disposition;

17 (3) the aggregate amount of the obligations after deducting the amount of proceeds;

18 (4) the amount, in the aggregate or by type, and types of expenses, including expenses of
19 retaking, holding, preparing for disposition, processing, and disposing of the
20 collateral, and attorney's fees secured by the collateral which are known to the
21 secured party and relate to the current disposition;

22 (5) the amount, in the aggregate or by type, and types of credits, including rebates of
23 interest or credit service charges, to which the obligor is known to be entitled and
24 which are not reflected in the amount in paragraph (1); and

25 (6) the amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 9-617. (a) A secured party's disposition of collateral after default:

- (1) transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) discharges the security interest under which the disposition is made; and
- (3) discharges any subordinate security interest or other subordinate lien, other than liens created by law that are not to be discharged.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest or agricultural lien under which the disposition is made; and
- (3) any other security interest or other lien.

Section 9-618. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

1 (3) is subrogated to the rights of a secured party with respect to collateral.

2 (b) An assignment, transfer, or subrogation described in subsection (a):

3 (1) is not a disposition of collateral under Section 9-610; and

4 (2) relieves the secured party of further duties under this article.

5 Section 9-619. (a) In this section, "transfer statement" means a record authenticated by a
6 secured party stating:

7 (1) that the debtor has defaulted in connection with an obligation secured by specified
8 collateral;

9 (2) that the secured party has exercised its post-default remedies with respect to the
10 collateral;

11 (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the
12 collateral; and

13 (4) the name and mailing address of the secured party, debtor, and transferee.

14 (b) A transfer statement entitles the transferee to the transfer of record of all rights of the
15 debtor in the collateral specified in the statement in any official filing, recording, registration, or
16 certificate-of-title system covering the collateral. If a transfer statement is presented with the
17 applicable fee and request form to the official or office responsible for maintaining the system,
18 the official or office shall:

19 (1) accept the transfer statement;

20 (2) promptly amend its records to reflect the transfer; and

21 (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

22 (c) A transfer of the record or legal title to collateral to a secured party under subsection (b)
23 or otherwise is not of itself a disposition of collateral under this article and does not of itself
24 relieve the secured party of its duties under this article.

25 Section 9-620. (a) Except as otherwise provided in subsection (g), a secured party may

1 accept collateral in full or partial satisfaction of the obligation it secures only if:

2 (1) the debtor consents to the acceptance under subsection (c);

3 (2) the secured party does not receive, within the time set forth in subsection (d), a
4 notification of objection to the proposal authenticated by:

5 (A) a person to which the secured party was required to send a proposal under
6 Section 9-621; or

7 (B) any other person, other than the debtor, holding an interest in the collateral
8 subordinate to the security interest that is the subject of the proposal;

9 (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor
10 when the debtor consents to the acceptance; and

11 (4) subsection (e) does not require the secured party to dispose of the collateral or the
12 debtor waives the requirement pursuant to Section 9-624.

13 (b) A purported or apparent acceptance of collateral under this section is ineffective unless:

14 (1) the secured party consents to the acceptance in an authenticated record or sends a
15 proposal to the debtor; and

16 (2) the conditions of subsection (a) are met.

17 (c) For purposes of this section:

18 (1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation
19 it secures only if the debtor agrees to the terms of the acceptance in a record
20 authenticated after default; and

21 (2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation
22 it secures only if the debtor agrees to the terms of the acceptance in a record
23 authenticated after default or the secured party:

24 (A) sends to the debtor after default a proposal that is unconditional or subject only
25 to a condition that collateral not in the possession of the secured party be

1 preserved or maintained;

2 (B) in the proposal, proposes to accept collateral in full satisfaction of the
3 obligation it secures; and

4 (C) does not receive a notification of objection authenticated by the debtor within
5 20 days after the proposal is sent.

6 (d) To be effective under subsection (a)(2), a notification of objection must be received by
7 the secured party:

8 (1) in the case of a person to which the proposal was sent pursuant to Section 9-621,
9 within 20 days after notification was sent to that person; and

10 (2) in other cases:

11 (A) within 20 days after the last notification was sent pursuant to Section 9-621;
12 or

13 (B) if a notification was not sent, before the debtor consents to the acceptance
14 under subsection (c).

15 (e) A secured party that has taken possession of collateral shall dispose of the collateral
16 pursuant to Section 9-610 within the time specified in subsection (f) if:

17 (1) 60 percent of the cash price has been paid in the case of a purchase-money security
18 interest in consumer goods; or

19 (2) 60 percent of the principal amount of the obligation secured has been paid in the case
20 of a non-purchase-money security interest in consumer goods.

21 (f) To comply with subsection (e), the secured party shall dispose of the collateral:

22 (1) within 90 days after taking possession; or

23 (2) within any longer period to which the debtor and all secondary obligors have agreed
24 in an agreement to that effect entered into and authenticated after default.

25 (g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction

1 of the obligation it secures.

2 Section 9-621. (a) A secured party that desires to accept collateral in full or partial
3 satisfaction of the obligation it secures shall send its proposal to:

4 (1) any person from which the secured party has received, before the debtor consented
5 to the acceptance, an authenticated notification of a claim of an interest in the
6 collateral;

7 (2) any other secured party or lienholder that, 10 days before the debtor consented to the
8 acceptance, held a security interest in or other lien on the collateral perfected by the
9 filing of a financing statement that:

10 (A) identified the collateral;

11 (B) was indexed under the debtor's name as of that date; and

12 (C) was filed in the office or offices in which to file a financing statement against
13 the debtor covering the collateral as of that date; and

14 (3) any other secured party that, 10 days before the debtor consented to the acceptance,
15 held a security interest in the collateral perfected by compliance with a statute,
16 regulation, or treaty described in Section 9-311(a).

17 (b) A secured party that desires to accept collateral in partial satisfaction of the obligation
18 it secures shall send its proposal to any secondary obligor in addition to the persons described
19 in subsection (a).

20 Section 9-622. (a) A secured party's acceptance of collateral in full or partial satisfaction of
21 the obligation it secures:

22 (1) discharges the obligation to the extent consented to by the debtor;

23 (2) transfers to the secured party all of a debtor's rights in the collateral;

24 (3) discharges the security interest or agricultural lien that is the subject of the debtor's
25 consent and any subordinate security interest or other subordinate lien; and

1 (4) terminates any other subordinate interest.

2 (b) A subordinate interest is discharged or terminated under subsection (a), even if the
3 secured party fails to comply with this article.

4 Section 9-623. (a) A debtor, any secondary obligor, or any other secured party or lienholder
5 may redeem collateral.

6 (b) To redeem collateral, a person shall tender:

7 (1) fulfillment of all obligations secured by the collateral; and

8 (2) the reasonable expenses and attorney's fees described in Section 9-615(a)(1).

9 (c) A redemption may occur at any time before a secured party:

10 (1) has collected collateral under Section 9-607;

11 (2) has disposed of collateral or entered into a contract for its disposition under Section
12 9-610; or

13 (3) has accepted collateral in full or partial satisfaction of the obligation it secures under
14 Section 9-622.

15 Section 9-624. (a) A debtor or secondary obligor may waive the right to notification of
16 disposition of collateral under Section 9-611 only by an agreement to that effect entered into and
17 authenticated after default.

18 (b) A debtor may waive the right to require disposition of collateral under Section 9-620(e)
19 only by an agreement to that effect entered into and authenticated after default.

20 (c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the
21 right to redeem collateral under Section 9-623 only by an agreement to that effect entered into
22 and authenticated after default.

23 Section 9-625. (a) If it is established that a secured party is not proceeding in accordance
24 with this article, a court may order or restrain collection, enforcement, or disposition of collateral
25 on appropriate terms and conditions.

(b) Subject to subsections (c) and (d) a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9-628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) A debtor whose deficiency is eliminated under Section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Section 9-626. (a) In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary

1 obligor places the secured party's compliance in issue.

2 (2) If the secured party's compliance is placed in issue, the secured party has the burden
3 of establishing that the collection, enforcement, disposition, or acceptance was
4 conducted in accordance with this part.

5 (3) Except as otherwise provided in Section 9-628, if a secured party fails to prove that
6 the collection, enforcement, disposition, or acceptance was conducted in accordance
7 with the provisions of this part relating to collection, enforcement, disposition, or
8 acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited
9 to an amount by which the sum of the secured obligation, expenses, and attorney's
10 fees exceeds the greater of:

11 (A) the proceeds of the collection, enforcement, disposition, or acceptance; or

12 (B) the amount of proceeds that would have been realized had the noncomplying
13 secured party proceeded in accordance with the provisions of this part relating
14 to collection, enforcement, disposition, or acceptance.

15 (4) For purposes of paragraph (3)(B), the amount of proceeds that would have been
16 realized is equal to the sum of the secured obligation, expenses, and attorney's fees
17 unless the secured party proves that the amount is less than that sum.

18 (5) If a deficiency or surplus is calculated under Section 9-615(f), the debtor or obligor
19 has the burden of establishing that the amount of proceeds of the disposition is
20 significantly below the range of prices that a complying disposition to a person other
21 than the secured party, a person related to the secured party, or a secondary obligor
22 would have brought.

23 Section 9-627. (a) The fact that a greater amount could have been obtained by a collection,
24 enforcement, disposition, or acceptance at a different time or in a different method from that
25 selected by the secured party is not of itself sufficient to preclude the secured party from

1 establishing that the collection, enforcement, disposition, or acceptance was made in a
2 commercially reasonable manner.

3 (b) A disposition of collateral is made in a commercially reasonable manner if the disposition
4 is made:

- 5 (1) in the usual manner on any recognized market;
- 6 (2) at the price current in any recognized market at the time of the disposition; or
- 7 (3) otherwise in conformity with reasonable commercial practices among dealers in the
8 type of property that was the subject of the disposition.

9 (c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has
10 been approved:

- 11 (1) in a judicial proceeding;
- 12 (2) by a bona fide creditors' committee;
- 13 (3) by a representative of creditors; or
- 14 (4) by an assignee for the benefit of creditors.

15 (d) Approval under subsection (c) need not be obtained, and lack of approval does not mean
16 that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

17 Section 9-628. (a) Unless a secured party knows that a person is a debtor or obligor, knows
18 the identity of the person, and knows how to communicate with the person:

- 19 (1) the secured party is not liable to the person, or to a secured party or lienholder that
20 has filed a financing statement against the person, for failure to comply with this
21 article; and
- 22 (2) the secured party's failure to comply with this article does not affect the liability of the
23 person for a deficiency.

24 (b) A secured party is not liable because of its status as secured party:

- 25 (1) to a person that is a debtor or obligor, unless the secured party knows:

1 (A) that the person is a debtor or obligor;

2 (B) the identity of the person; and

3 (C) how to communicate with the person; or

4 (2) to a secured party or lienholder that has filed a financing statement against a person,
5 unless the secured party knows:

6 (A) that the person is a debtor; and

7 (B) the identity of the person.

8 (c) A secured party is not liable to any person, and a person's liability for a deficiency is not
9 affected, because of any act or omission arising out of the secured party's reasonable belief that
10 a transaction is not a consumer-goods transaction or a consumer transaction or that goods are
11 not consumer goods, if the secured party's belief is based on its reasonable reliance on:

12 (1) a debtor's representation concerning the purpose for which collateral was to be used,
13 acquired, or held; or

14 (2) an obligor's representation concerning the purpose for which a secured obligation was
15 incurred.

16 (d) A secured party is not liable to any person under Section 9-625(c)(2) for its failure to
17 comply with Section 9-616.

18 (e) A secured party is not liable under Section 9-625(c)(2) more than once with respect to
19 any one secured obligation.

20 Section 9-701. This Act is effective on July 1, 2001.

21 Section 9-702. (a) Except as otherwise provided in this part, this Act applies to a transaction
22 or lien within its scope, even if the transaction or lien was entered into or created before this Act
23 takes effect.

24 (b) Except as otherwise provided in subsection (c) and Sections 9-703 through 9-709:

25 (1) transactions and liens that were not governed by former Article 9, were validly

1 entered into or created before this Act takes effect, and would be subject to this Act
2 if they had been entered into or created after this Act takes effect, and the rights,
3 duties, and interests flowing from those transactions and liens remain valid after this
4 Act takes effect; and

5 (2) the transactions and liens may be terminated, completed, consummated, and enforced
6 as required or permitted by this Act or by the law that otherwise would apply if this
7 Act had not taken effect.

8 (c) This Act does not affect an action, case, or proceeding commenced before this Act takes
9 effect.

10 Section 9-703. (a) A security interest that is enforceable immediately before this Act takes
11 effect and would have priority over the rights of a person that becomes a lien creditor at that time
12 is a perfected security interest under this Act if, when this Act takes effect, the applicable
13 requirements for enforceability and perfection under this Act are satisfied without further action.

14 (b) Except as otherwise provided in Section 9-705, if, immediately before this Act takes
15 effect, a security interest is enforceable and would have priority over the rights of a person that
16 becomes a lien creditor at that time, but the applicable requirements for enforceability or
17 perfection under this Act are not satisfied when this Act takes effect, the security interest:

- 18 (1) is a perfected security interest for one year after this Act takes effect;
19 (2) remains enforceable thereafter only if the security interest becomes enforceable under
20 Section 9-203 before the year expires; and
21 (3) remains perfected thereafter only if the applicable requirements for perfection under
22 this Act are satisfied before the year expires.

23 Section 9-704. A security interest that is enforceable immediately before this Act takes effect
24 but which would be subordinate to the rights of a person that becomes a lien creditor at that
25 time:

1 (1) remains an enforceable security interest for one year after this Act takes effect;

2 (2) remains enforceable thereafter if the security interest becomes enforceable under
3 Section 9-203 when this Act takes effect or within one year thereafter; and

4 (3) becomes perfected:

5 (A) without further action, when this Act takes effect if the applicable requirements
6 for perfection under this Act are satisfied before or at that time; or

7 (B) when the applicable requirements for perfection are satisfied if the requirements
8 are satisfied after that time.

9 Section 9-705. (a) If action, other than the filing of a financing statement, is taken before this
10 Act takes effect and the action would have resulted in priority of a security interest over the
11 rights of a person that becomes a lien creditor had the security interest become enforceable
12 before this Act takes effect, the action is effective to perfect a security interest that attaches
13 under this Act within one year after this Act takes effect. An attached security interest becomes
14 unperfected one year after this Act takes effect unless the security interest becomes a perfected
15 security interest under this Act before the expiration of that period.

16 (b) The filing of a financing statement before this Act takes effect is effective to perfect a
17 security interest to the extent the filing would satisfy the applicable requirements for perfection
18 under this Act.

19 (c) This Act does not render ineffective an effective financing statement that, before this Act
20 takes effect, is filed and satisfies the applicable requirements for perfection under the law of the
21 jurisdiction governing perfection as provided in former Section 9-103. However, except as
22 otherwise provided in subsections (d) and (e) and Section 9-706, the financing statement ceases
23 to be effective at the earlier of:

24 (1) the time the financing statement would have ceased to be effective under the law of
25 the jurisdiction in which it is filed; or

1 (2) June 30, 2006.

2 (d) The filing of a continuation statement after this Act takes effect does not continue the
3 effectiveness of the financing statement filed before this Act takes effect. However, upon the
4 timely filing of a continuation statement after this Act takes effect and in accordance with the law
5 of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing
6 statement filed in the same office in that jurisdiction before this Act takes effect continues for the
7 period provided by the law of that jurisdiction.

8 (e) Subsection (c)(2) applies to a financing statement that, before this Act takes effect, is filed
9 against a transmitting utility and satisfies the applicable requirements for perfection under the law
10 of the jurisdiction governing perfection as provided in former Section 9-103 only to the extent
11 that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing
12 statement is filed governs perfection of a security interest in collateral covered by the financing
13 statement.

14 (f) A financing statement that includes a financing statement filed before this Act takes effect
15 and a continuation statement filed after this Act takes effect is effective only to the extent that
16 it satisfies the requirements of Part 5 for an initial financing statement.

17 Section 9-706. (a) The filing of an initial financing statement in the office specified in Section
18 9-501 continues the effectiveness of a financing statement filed before this Act takes effect if:

- 19 (1) the filing of an initial financing statement in that office would be effective to perfect
20 a security interest under this Act;
- 21 (2) the pre-effective-date financing statement was filed in an office in another State or
22 another office in this State; and
- 23 (3) the initial financing statement satisfies subsection (c).

24 (b) The filing of an initial financing statement under subsection (a) continues the effectiveness
25 of the pre-effective-date financing statement:

- 1 (1) if the initial financing statement is filed before this Act takes effect, for the period
- 2 provided in § 57A-9-403 with respect to a financing statement; and
- 3 (2) if the initial financing statement is filed after this Act takes effect, for the period
- 4 provided in Section 9-515 with respect to an initial financing statement.
- 5 (c) To be effective for purposes of subsection (a), an initial financing statement must:
- 6 (1) satisfy the requirements of Part 5 for an initial financing statement;
- 7 (2) identify the pre-effective-date financing statement by indicating the office in which
- 8 the financing statement was filed and providing the dates of filing and file numbers,
- 9 if any, of the financing statement and of the most recent continuation statement filed
- 10 with respect to the financing statement; and
- 11 (3) indicate that the pre-effective-date financing statement remains effective.

12 Section 9-707. (a) In this section, "pre-effective-date financing statement" means a financing
13 statement filed before this Act takes effect.

14 (b) After this Act takes effect, a person may add or delete collateral covered by, continue or
15 terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-
16 date financing statement only in accordance with the law of the jurisdiction governing perfection
17 as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also
18 may be terminated in accordance with the law of the jurisdiction in which the financing statement
19 is filed.

20 (c) Except as otherwise provided in subsection (d), if the law of this State governs perfection
21 of a security interest, the information in a pre-effective-date financing statement may be amended
22 after this Act takes effect only if:

- 23 (1) the pre-effective-date financing statement and an amendment are filed in the office
- 24 specified in Section 9-501;
- 25 (2) an amendment is filed in the office specified in Section 9-501 concurrently with, or

1 after the filing in that office of, an initial financing statement that satisfies Section 9-
2 706(c); or

3 (3) an initial financing statement that provides the information as amended and satisfies
4 Section 9-706(c) is filed in the office specified in Section 9-501.

5 (d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-
6 effective-date financing statement may be continued only under Section 9-705(d) and (f) or 9-
7 706.

8 (e) Whether or not the law of this State governs perfection of a security interest, the
9 effectiveness of a pre-effective-date financing statement filed in this State may be terminated after
10 this Act takes effect by filing a termination statement in the office in which the pre-effective-date
11 financing statement is filed, unless an initial financing statement that satisfies Section 9-706(c)
12 has been filed in the office specified by the law of the jurisdiction governing perfection as
13 provided in Part 3 as the office in which to file a financing statement.

14 Section 9-708. A person may file an initial financing statement or a continuation statement
15 under this part if:

16 (1) the secured party of record authorizes the filing; and

17 (2) the filing is necessary under this part:

18 (A) to continue the effectiveness of a financing statement filed before this Act takes
19 effect; or

20 (B) to perfect or continue the perfection of a security interest.

21 Section 9-709. (a) This Act determines the priority of conflicting claims to collateral.
22 However, if the relative priorities of the claims were established before this Act takes effect,
23 former chapter 57A-9 determines priority.

24 (b) For purposes of Section 9-322(a), the priority of a security interest that becomes
25 enforceable under Section 9-203 of this Act dates from the time this Act takes effect if the

security interest is perfected under this Act by the filing of a financing statement before this Act takes effect which would not have been effective to perfect the security interest under former chapter 57A-9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

Section 1. That chapter 57A-9 be repealed.

Section 2. That § 57A-1-105 be amended to read as follows:

57A-1-105.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. § 57A-2-402.

Applicability of the article on leases. §§ 57A-2A-105 and 57A-2A-106.

Applicability of the chapters on bank deposits and collections. § 57A-4-102.

Governing law in the article on funds transfers. § 57A-4A-507.

Letters of Credit. § 57A-5-116.

Applicability of the chapters on investment securities. § 57A-8-110.

~~Perfection provisions of the chapter on secured transactions. § 57A-9-103.~~

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9-301 through 9-307.

Section 3. That § 57A-1-201 be amended to read as follows:

57A-1-201. Subject to additional definitions contained in the subsequent chapters of this title which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (§§ 57A-1-205 and 57A-2-208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (§ 57A-1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person ~~who~~ that buys goods in good faith ~~and, without knowledge that the sale to him is in violation of the ownership~~

~~violates the rights or security interest of a third party of another person in the goods~~
~~buys, and in the ordinary course from a person, other than a pawnbroker, in the~~
~~business of selling goods of that kind but does not include a pawnbroker. All persons~~
~~who sell minerals or the like (including oil and gas) at wellhead or minehead shall be~~
~~deemed to be persons. A person buys goods in the ordinary course if the sale to the~~
~~person comports with the usual or customary practices in the kind of business in~~
~~which the seller is engaged or with the seller's own usual or customary practices. A~~
~~person that sells oil, gas, or other minerals at the wellhead or minehead is a person in~~
~~the business of selling goods of that kind. "Buying" A buyer in ordinary course of~~
~~business may be buy for cash or, by exchange of other property, or on secured or~~
~~unsecured credit, and includes receiving may acquire goods or documents of title~~
~~under a preexisting contract for sale but does not include a transfer in bulk or as~~
~~security for or in total or partial satisfaction of a money debt. Only a buyer that takes~~
~~possession of the goods or has a right to recover the goods from the seller under~~
~~Article 2 may be a buyer in ordinary course of business. A person that acquires goods~~
~~in a transfer in bulk or as security for or in total or partial satisfaction of a money debt~~
~~is not a buyer in ordinary course of business.~~

(10) "Conspicuous" A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. (Compare "Agreement.")

- 1 (12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any
2 representative of creditors, including an assignee for the benefit of creditors, a trustee
3 in bankruptcy, a receiver in equity and an executor or administrator of an insolvent
4 debtor's or assignor's estate.
- 5 (13) "Defendant" includes a person in the position of defendant in a cross-action or
6 counterclaim.
- 7 (14) "Delivery" with respect to instruments, documents of title, chattel paper or
8 certificated securities means voluntary transfer of possession.
- 9 (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse
10 receipt or order for the delivery of goods, and also any other document which in the
11 regular course of business or financing is treated as adequately evidencing that the
12 person in possession of it is entitled to receive, hold and dispose of the document and
13 the goods it covers. To be a document of title a document must purport to be issued
14 by or addressed to a bailee and purport to cover goods in the bailee's possession
15 which are either identified or are fungible portions of an identified mass.
- 16 (16) "Fault" means wrongful act, omission or breach.
- 17 (17) "Fungible" with respect to goods or securities means goods or securities of which any
18 unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which
19 are not fungible shall be deemed fungible for the purposes of this title to the extent
20 that under a particular agreement or document unlike units are treated as equivalents.
- 21 (18) "Genuine" means free of forgery or counterfeiting.
- 22 (19) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 23 (20) "Holder" with respect to a negotiable instrument, means the person in possession if
24 the instrument is payable to bearer or, in the case of an instrument payable to an
25 identified person, if the identified person is in possession. "Holder," with respect to

1 a document of title, means the person in possession if the goods are deliverable to
2 bearer or to the order of the person in possession.

3 (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase
4 or discount a draft complying with the terms of the credit.

5 (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other
6 proceedings intended to liquidate or rehabilitate the estate of the person involved.

7 (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course
8 of business or cannot pay his debts as they become due or is insolvent within the
9 meaning of the federal bankruptcy law.

10 (24) "Money" means a medium of exchange authorized or adopted by a domestic or
11 foreign government and includes a monetary unit of account established by an
12 intergovernmental organization or by agreement between two or more nations.

13 (25) A person has "notice" of a fact when

14 (a) He has actual knowledge of it; or

15 (b) He has received a notice or notification of it; or

16 (c) From all the facts and circumstances known to him at the time in question he
17 has reason to know that it exists.

18 A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.

19 "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather
20 than to reason to know. The time and circumstances under which a notice or
21 notification may cease to be effective are not determined by this title.

22 (26) A person "notifies" or "gives" a notice or notification to another by taking such steps
23 as may be reasonably required to inform the other in ordinary course whether or not
24 such other actually comes to know of it. A person "receives" a notice or notification
25 when

1 (a) It comes to his attention; or

2 (b) It is duly delivered at the place of business through which the contract was
3 made or at any other place held out by him as the place for receipt of such
4 communications.

5 (27) Notice, knowledge or a notice or notification received by an organization is effective
6 for a particular transaction from the time when it is brought to the attention of the
7 individual conducting that transaction, and in any event from the time when it would
8 have been brought to his attention if the organization had exercised due diligence. An
9 organization exercises due diligence if it maintains reasonable routines for
10 communicating significant information to the person conducting the transaction and
11 there is reasonable compliance with the routines. Due diligence does not require an
12 individual acting for the organization to communicate information unless such
13 communication is part of his regular duties or unless he has reason to know of the
14 transaction and that the transaction would be materially affected by the information.

15 (28) "Organization" includes a corporation, government or governmental subdivision or
16 agency, business trust, estate, trust, partnership or association, two or more persons
17 having a joint or common interest, or any other legal or commercial entity.

18 (29) "Party," as distinct from "third party," means a person who has engaged in a
19 transaction or made an agreement within this title.

20 (30) "Person" includes an individual or an organization (see § 57A-1-102).

21 (31) "Presumption" or "presumed" means that the trier of fact must find the existence of
22 the fact presumed unless and until evidence is introduced which would support a
23 finding of its nonexistence.

24 (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,
25 security interest, issue or reissue, gift or any other voluntary transaction creating an

1 interest in property.

2 (33) "Purchaser" means a person who takes by purchase.

3 (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or
4 without resort to a tribunal.

5 (35) "Representative" includes an agent, an officer of a corporation or association, and a
6 trustee, executor or administrator of an estate, or any other person empowered to act
7 for another.

8 (36) "Rights" includes remedies.

9 (37) "Security interest" means an interest in personal property or fixtures which secures
10 payment or performance of an obligation. ~~The retention or reservation of title by a~~
11 ~~seller of goods notwithstanding shipment or delivery to the buyer (§ 57A-2-401) is~~
12 ~~limited in effect to a reservation of a "security interest."~~ The term also includes any
13 interest of a consignor and a buyer of accounts or chattel paper which, a payment
14 intangible, or a promissory note in a transaction that is subject to chapter 57A-9. The
15 special property interest of a buyer of goods on identification of those goods to a
16 contract for sale under § 57A-2-401 is not a "security interest," but a buyer may also
17 acquire a "security interest" by complying with chapter 57A-9. ~~Unless a consignment~~
18 ~~is intended as security, reservation of title thereunder is not a "security interest" but~~
19 ~~a consignment in any event is subject to the provisions on consignment sales~~
20 ~~(§ 57A-2-326). Except as otherwise provided in Section 2-505, the right of a seller~~
21 ~~or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods~~
22 ~~is not a "security interest," but a seller or lessor may also acquire a "security interest"~~
23 ~~by complying with Article 9. The retention or reservation of title by a seller of goods~~
24 ~~notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect~~
25 ~~to a reservation of a "security interest."~~

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods,
- (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,
- (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or
- (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,
- (c) the lessee has an option to renew the lease or to become the owner of the goods,
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or

- 1 greater than the reasonably predictable fair market rent for the use of the goods
2 for the term of the renewal at the time the option is to be performed, or
3 (e) the lessee has an option to become the owner of the goods for a fixed price
4 that is equal to or greater than the reasonably predictable fair market value of
5 the goods at the time the option is to be performed.

6 For purposes of this subsection (37):

- 7 (a) Additional consideration is not nominal if (i) when the option to renew the
8 lease is granted to the lessee the rent is stated to be the fair market rent for the
9 use of the goods for the term of the renewal determined at the time the option
10 is to be performed, or (ii) when the option to become the owner of the goods
11 is granted to the lessee the price is stated to be the fair market value of the
12 goods determined at the time the option is to be performed. Additional
13 consideration is nominal if it is less than the lessee's reasonably predictable cost
14 of performing under the lease agreement if the option is not exercised;
15 (b) "Reasonably predictable" and "remaining economic life of the goods" are to be
16 determined with reference to the facts and circumstances at the time the
17 transaction is entered into; and
18 (c) "Present value" means the amount as of a date certain of one or more sums
19 payable in the future, discounted to the date certain. The discount is
20 determined by the interest rate specified by the parties if the rate is not
21 manifestly unreasonable at the time the transaction is entered into; otherwise,
22 the discount is determined by a commercially reasonable rate that takes into
23 account the facts and circumstances of each case at the time the transaction
24 was entered into.

- 25 (38) "Send" in connection with any writing or notice means to deposit in the mail or deliver

1 for transmission by any other usual means of communication with postage or cost of
2 transmission provided for and properly addressed and in the case of an instrument to
3 an address specified thereon or otherwise agreed, or if there be none to any address
4 reasonable under the circumstances. The receipt of any writing or notice within the
5 time at which it would have arrived if properly sent has the effect of a proper sending.

6 (39) "Signed" includes any symbol executed or adopted by a party with present intention
7 to authenticate a writing.

8 (40) "Surety" includes guarantor.

9 (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical
10 method of transmission, or the like.

11 (42) "Term" means that portion of an agreement which relates to a particular matter.

12 (43) "Unauthorized" signature means one made without actual, implied, or apparent
13 authority and includes a forgery.

14 (44) "Value." Except as otherwise provided with respect to negotiable instruments and
15 bank collections (§§ 57A-3-303, 57A-4-208, and 57A-4-209) a person gives "value"
16 for rights if he acquires them

17 (a) In return for a binding commitment to extend credit or for the extension of
18 immediately available credit whether or not drawn upon and whether or not a
19 charge-back is provided for in the event of difficulties in collection; or

20 (b) As security for or in total or partial satisfaction of a preexisting claim; or

21 (c) By accepting delivery pursuant to a preexisting contract for purchase; or

22 (d) Generally, in return for any consideration sufficient to support a simple
23 contract.

24 (45) "Warehouse receipt" means a receipt issued by a person engaged in the business of
25 storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Section 4. That § 57A-2-103 be amended to read as follows:

57A-2-103.

(1) In this chapter unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance." § 57A-2-606.

"Banker's credit." § 57A-2-325.

"Between merchants." § 57A-2-104.

"Cancellation." § 57A-2-106(4).

"Commercial unit." § 57A-2-105.

"Confirmed credit." § 57A-2-325.

"Conforming to contract." § 57A-2-106.

"Contract for sale." § 57A-2-106.

"Cover." § 57A-2-712.

"Entrusting." § 57A-2-403.

"Financing agency." § 57A-2-104.

"Future goods." § 57A-2-105.

"Goods." § 57A-2-105.

1 "Identification." § 57A-2-501.

2 "Installment contract." § 57A-2-612.

3 "Letter of credit." § 57A-2-325.

4 "Lot." § 57A-2-105.

5 "Merchant." § 57A-2-104.

6 "Overseas." § 57A-2-323.

7 "Person in position of seller." § 57A-2-707.

8 "Present sale." § 57A-2-106.

9 "Sale." § 57A-2-106.

10 "Sale on approval." § 57A-2-326.

11 "Sale or return." § 57A-2-326.

12 "Termination." § 57A-2-106.

13 (3) The following definitions in other chapters apply to this chapter:

14 "Check." § 57A-3-104.

15 "Consignee." § 57A-7-102.

16 "Consignor." § 57A-7-102.

17 "Consumer goods." ~~§ 57A-9-109~~ Section 9-102.

18 "Dishonor." ~~§ 57A-3-502~~ Section 3-502.

19 "Draft." § 57A-3-104.

20 (4) In addition chapter 57A-1 contains general definitions and principles of construction
21 and interpretation applicable throughout this chapter.

22 Section 5. That § 57A-2-210 be amended to read as follows:

23 57A-2-210.

24 (1) A party may perform his duty through a delegate unless otherwise agreed or unless
25 the other party has a substantial interest in having his original promisor perform or

1 control the acts required by the contract. No delegation of performance relieves the
2 party delegating of any duty to perform or any liability for breach.

3 (2) ~~Unless~~ Except as otherwise provided in Section 9-406, unless otherwise agreed, all
4 rights of either seller or buyer can be assigned except where the assignment would
5 materially change the duty of the other party, or increase materially the burden or risk
6 imposed on him by his contract, or impair materially his chance of obtaining return
7 performance. A right to damages for breach of the whole contract or a right arising
8 out of the assignor's due performance of his entire obligation can be assigned despite
9 agreement otherwise.

10 (3) ~~Unless the circumstances indicate the contrary a prohibition of assignment of "the~~
11 ~~contract" is to be construed as barring only the delegation to the assignee of the~~
12 ~~assignor's performance. The creation, attachment, perfection, or enforcement of a~~
13 ~~security interest in the seller's interest under a contract is not a transfer that materially~~
14 ~~changes the duty of or increases materially the burden or risk imposed on the buyer~~
15 ~~or impairs materially the buyer's chance of obtaining return performance within the~~
16 ~~purview of subsection (2) unless, and then only to the extent that, enforcement~~
17 ~~actually results in a delegation of material performance of the seller. Even in that~~
18 ~~event, the creation, attachment, perfection, and enforcement of the security interest~~
19 ~~remain effective, but (i) the seller is liable to the buyer for damages caused by the~~
20 ~~delegation to the extent that the damages could not reasonably be prevented by the~~
21 ~~buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including~~
22 ~~cancellation of the contract for sale or an injunction against enforcement of the~~
23 ~~security interest or consummation of the enforcement.~~

24 (4) An assignment of "the contract" or of "all my rights under the contract" or an
25 assignment in similar general terms is an assignment of rights and unless the language

1 or the circumstances (as in an assignment for security) indicate the contrary, it is a
2 delegation of performance of the duties of the assignor and its acceptance by the
3 assignee constitutes a promise by him to perform those duties. This promise is
4 enforceable by either the assignor or the other party to the original contract.

- 5 (5) The other party may treat any assignment which delegates performance as creating
6 reasonable grounds for insecurity and may without prejudice to his rights against the
7 assignor demand assurances from the assignee (§ 57A-2-609).

8 Section 6. That § 57A-2-326 be amended to read as follows:

9 57A-2-326.

- 10 (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though
11 they conform to the contract, the transaction is

12 (a) A "sale on approval" if the goods are delivered primarily for use; and

13 (b) A "sale or return" if the goods are delivered primarily for resale.

- 14 (2) ~~Except as provided in subsection (3), goods~~ Goods held on approval are not subject
15 to the claims of the buyer's creditors until acceptance; goods held on sale or return are
16 subject to such claims while in the buyer's possession.

- 17 (3) ~~Where goods are delivered to a person for sale and such person maintains a place of~~
18 ~~business at which he deals in goods of the kind involved, under a name other than the~~
19 ~~name of the person making delivery, then with respect to claims of creditors of the~~
20 ~~person conducting the business the goods are deemed to be on sale or return. The~~
21 ~~provisions of this section are applicable even though an agreement purports to reserve~~
22 ~~title to the person making delivery until payment or resale or uses such words as "on~~
23 ~~consignment" or "on memorandum." However, this section is not applicable if the~~
24 ~~person making delivery:~~

- 25 ~~———— (a) ————~~ (a) Complies with an applicable law providing for a consignor's interest or the like

1 ~~to be evidenced by a sign; or~~

2 ~~———— (b) Establishes that the person conducting the business is generally known by his~~

3 ~~creditors to be substantially engaged in selling the goods of others; or~~

4 ~~———— (c) Complies with the filing provisions of the chapter on secured transactions~~

5 ~~(chapter 57A-9).~~

6 ~~———— (4) —~~Any "or return" term of a contract for sale is to be treated as a separate contract for

7 sale within the statute of frauds section of this chapter (§ 57A-2-201) and as

8 contradicting the sale aspect of the contract within the provisions of this chapter on

9 parol or extrinsic evidence (§ 57A-2-202).

10 Section 7. That § 57A-2-502 be amended to read as follows:

11 57A-2-502.

12 (1) Subject to ~~subsection~~ subsections (2) and (3) and even though the goods have not
13 been shipped a buyer who has paid a part or all of the price of goods in which he has
14 a special property under the provisions of § 57A-2-501 may on making and keeping
15 good a tender of any unpaid portion of their price recover them from the seller if:

16 (a) in the case of goods bought for personal, family, or household purposes, the
17 seller repudiates or fails to deliver as required by the contract; or

18 (b) in all cases, the seller becomes insolvent within ten days after receipt of the first
19 installment on their price.

20 (2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition
21 of a special property, even if the seller had not then repudiated or failed to deliver.

22 (3) If the identification creating his special property has been made by the buyer he
23 acquires the right to recover the goods only if they conform to the contract for sale.

24 Section 8. That § 57A-2-716 be amended to read as follows:

25 57A-2-716.

1 (1) Specific performance may be decreed where the goods are unique or in other proper
2 circumstances.

3 (2) The decree for specific performance may include such terms and conditions as to
4 payment of the price, damages, or other relief as the court may deem just.

5 (3) The buyer has a right of replevin for goods identified to the contract if after
6 reasonable effort he is unable to effect cover for such goods or the circumstances
7 reasonably indicate that such effort will be unavailing or if the goods have been
8 shipped under reservation and satisfaction of the security interest in them has been
9 made or tendered. In the case of goods bought for personal, family, or household
10 purposes, the buyer's right of replevin vests upon acquisition of a special property,
11 even if the seller had not then repudiated or failed to deliver.

12 Section 9. That § 57A-2A-103 be amended to read as follows:

13 57A-2A-103.

14 (1) In this chapter unless the context otherwise requires:

15 (a) "Buyer in ordinary course of business" means a person who in good faith and
16 without knowledge that the sale to him is in violation of the ownership rights
17 or security interest or leasehold interest of a third party in the goods buys in
18 ordinary course from a person in the business of selling goods of that kind but
19 does not include a pawnbroker. "Buying" may be for cash or by exchange of
20 other property or on secured or unsecured credit and includes receiving goods
21 or documents of title under a preexisting contract for sale but does not include
22 a transfer in bulk or as security for or in total or partial satisfaction of a money
23 debt.

24 (b) "Cancellation" occurs when either party puts an end to the lease contract for
25 default by the other party.

- 1 (c) "Commercial unit" means such a unit of goods as by commercial usage is a
2 single whole for purposes of lease and division of which materially impairs its
3 character or value on the market or in use. A commercial unit may be a single
4 article, as a machine, or a set of articles, as a suite of furniture or a line of
5 machinery, or a quantity, as a gross or carload, or any other unit treated in use
6 or in the relevant market as a single whole.
- 7 (d) "Conforming" goods or performance under a lease contract means goods or
8 performance that are in accordance with the obligations under the lease
9 contract.
- 10 (e) "Consumer lease" means a lease that a lessor regularly engaged in the business
11 of leasing or selling makes to a lessee who is a natural person and takes under
12 the lease primarily for a personal, family, or household purpose.
- 13 (f) "Fault" means wrongful act, omission, breach or default.
- 14 (g) "Finance lease" means a lease in which (i) the lessor does not select,
15 manufacture or supply the goods, (ii) the lessor acquires the goods or the right
16 to possession and use of the goods in connection with the lease, and (iii) either
17 (A) the lessee receives a copy of the contract evidencing the lessor's purchase
18 of the goods on or before signing the lease contract, (B) the lessee's approval
19 of the contract evidencing the lessor's purchase of the goods is a condition to
20 effectiveness of the lease contract, (C) the lessor (aa) informs the lessee in
21 writing of the identity of the supplier unless the lessee has selected the supplier
22 and directed the lessor to purchase the goods from the supplier, (bb) informs
23 the lessee in writing that the lessee may have rights under the contract
24 evidencing the lessor's purchase of the goods, and (cc) advises the lessee in
25 writing to contact the supplier for a description of any such rights, or (D) the

1 lease contract discloses all warranties and other rights provided to the lessee
2 by the lessor and supplier in connection with the lease contract and informs the
3 lessee that there are no warranties or other rights provided to the lessee by the
4 lessor and supplier other than those disclosed in the lease contract.

5 (h) "Goods" means all things that are movable at the time of identification to the
6 lease contract, or are fixtures (§ 57A-2A-309), but the term does not include
7 money, documents, instruments, accounts, chattel paper, general intangibles,
8 or minerals or the like, including oil and gas, before extraction. The term also
9 includes the unborn young of animals.

10 (i) "Installment lease contract" means a lease contract that authorizes or requires
11 the delivery of goods in separate lots to be separately accepted, even though
12 the lease contract contains a clause "each delivery is a separate lease" or its
13 equivalent.

14 (j) "Lease" means a transfer of the right to possession and use of goods for a term
15 in return for consideration, but a sale, including a sale on approval or a sale or
16 return, or retention or creation of a security interest is not a lease. Unless the
17 context clearly indicates otherwise, the term includes a sublease.

18 (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor
19 and the lessee in fact as found in their language or by implication from other
20 circumstances including course of dealing or usage of trade or course of
21 performance as provided in this chapter. Unless the context clearly indicates
22 otherwise, the term includes a sublease agreement.

23 (l) "Lease contract" means the total legal obligation that results from the lease
24 agreement as affected by this chapter and any other applicable rules of law.
25 Unless the context clearly indicates otherwise, the term includes a sublease

1 contract.

2 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease
3 contract.

4 (n) "Lessee" means a person who acquires the right to possession and use of goods
5 under a lease. Unless the context clearly indicates otherwise, the term includes
6 a sublessee.

7 (o) "Lessee in ordinary course of business" means a person who in good faith and
8 without knowledge that the lease to him is in violation of the ownership rights
9 or security interest or leasehold interest of a third party in the goods leases in
10 ordinary course from a person in the business of selling or leasing goods of that
11 kind but does not include a pawnbroker. "Leasing" may be for cash or by
12 exchange of other property or on secured or unsecured credit and includes
13 receiving goods or documents of title under a preexisting lease contract but
14 does not include a transfer in bulk or as security for or in total or partial
15 satisfaction of a money debt.

16 (p) "Lessor" means a person who transfers the right to possession and use of
17 goods under a lease. Unless the context clearly indicates otherwise, the term
18 includes a sublessor.

19 (q) "Lessor's residual interest" means the lessor's interest in the goods after
20 expiration, termination or cancellation of the lease contract.

21 (r) "Lien" means a charge against or interest in goods to secure payment of a debt
22 or performance of an obligation, but the term does not include a security
23 interest.

24 (s) "Lot" means a parcel or a single article that is the subject matter of a separate
25 lease or delivery, whether or not it is sufficient to perform the lease contract.

1 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of
2 the kind subject to the lease.

3 (u) "Present value" means the amount as of a date certain of one or more sums
4 payable in the future, discounted to the date certain. The discount is
5 determined by the interest rate specified by the parties if the rate was not
6 manifestly unreasonable at the time the transaction was entered into; otherwise,
7 the discount is determined by a commercially reasonable rate that takes into
8 account the facts and circumstances of each case at the time the transaction
9 was entered into.

10 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,
11 gift or any other voluntary transaction creating an interest in goods.

12 (w) "Sublease" means a lease of goods the right to possession and use of which
13 was acquired by the lessor as a lessee under an existing lease.

14 (x) "Supplier" means a person from whom a lessor buys or leases goods to be
15 leased under a finance lease.

16 (y) "Supply contract" means a contract under which a lessor buys or leases goods
17 to be leased.

18 (z) "Termination" occurs when either party pursuant to a power created by
19 agreement or law puts an end to the lease contract otherwise than for default.

20 (2) Other definitions applying to this chapter and the sections in which they appear are:

21 "Accessions." § 57A-2A-310(1).

22 "Construction mortgage." § 57A-2A-309(1)(d).

23 "Encumbrance." § 57A-2A-309(1)(e).

24 "Fixtures." § 57A-2A-309(1)(a).

25 "Fixture filing." § 57A-2A-309(1)(b).

1 "Purchase money lease." § 57A-2A-309(1)(c).

2 (3) The following definitions apply to this chapter:

3 "Account." ~~§ 57A-9-106~~ Section 9-102(a)(2).

4 "Between merchants." § 57A-2-104(3) .

5 "Buyer." § 57A-2-103(1)(a).

6 "Chattel paper." ~~§ 57A-9-105(1)(b)~~ Section 9-102(a)(11).

7 "Consumer goods." ~~§ 57A-9-109(1)~~ Section 9-102(a)(23).

8 "Document." ~~§ 57A-9-105(1)(f)~~ Section 9-102(a)(30).

9 "Entrusting." § 57A-2-403(3).

10 ~~"General intangibles." § 57A-9-106.~~ "General intangible." Section 9-102(a)(42).

11 "Good faith." § 57A-2-103(1)(b).

12 "Instrument." ~~§ 57A-9-105(1)(i)~~ Section 9-102(a)(47).

13 "Merchant." § 57A-2-104(1).

14 "Mortgage." ~~§ 57A-9-105(1)(j)~~ Section 9-102(a)(55).

15 "Pursuant to commitment." ~~§ 57A-9-105(1)(k)~~ Section 9-102(a)(68).

16 "Receipt." § 57A-2-103(1)(c).

17 "Sale." § 57A-2-106(1).

18 "Sale on approval." § 57A-2-326(1)(a).

19 "Sale or return." § 57A-2-326(1)(b).

20 "Seller." § 57A-2-103(1)(d).

21 (4) In addition, chapter 57A-1 (commencing with § 57A-1-101) contains general
22 definitions and principles of construction and interpretation applicable throughout this
23 chapter.

24 Section 10. That § 57A-2A-307 be amended to read as follows:

25 57A-2A-307.

(1) Except as otherwise provided in § 57A-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in ~~subsections~~ subsection (3) ~~and (4)~~ of this section and in §§ 57A-2A-306 and 57A-2A-308, a creditor of a lessor takes subject to the lease contract;

~~———— (a) — Unless unless the creditor holds a lien that attached to the goods before the lease contract became enforceable;~~

~~———— (b) — Unless the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~———— (c) — Unless the creditor holds a security interest in the goods that attached and was perfected before (i) the lease contract became enforceable, (ii) the lessee gave value and received delivery of the goods, or (iii) in the case of a purchase money security interest, the date that is twenty days after the date that the lessor received possession of the goods or the date that the lessee received possession of the goods, whichever is earlier.~~

~~———— (3) — A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.~~

~~———— (4) — A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.~~

(3) Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

Section 11. That § 57A-2A-309 be amended to read as follows:

57A-2A-309.

(1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be recorded, of a financing statement concerning goods that are or are to become fixtures and conforming to the requirements of ~~§ 57A-9-402(5)~~ Section 9-502(a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of

an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(b) A fixture filing covering the fixtures is filed before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(c) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease;

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(e) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(f) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(5) Notwithstanding subsection (a) of subsection (4) of this section but otherwise subject to subsection (4), the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded

1 before the goods become fixtures if the goods become fixtures before the completion
2 of the construction. To the extent given to refinance a construction mortgage, the
3 conflicting interest of an encumbrancer of the real estate under a mortgage has this
4 priority to the same extent as the encumbrancer of the real estate under the
5 construction mortgage.

6 (6) In cases not within the preceding subsections, priority between the interest of a lessor
7 of fixtures and the conflicting interest of an encumbrancer or owner of the real estate
8 who is not the lessee is determined by the priority rules governing conflicting interests
9 in real estate.

10 (7) If the interest of a lessor has priority over all conflicting interests of all owners and
11 encumbrancers of the real estate, the lessor or the lessee may (a) on default,
12 expiration, termination, or cancellation of the lease agreement by the other party but
13 subject to the provisions of the lease agreement and this chapter, or (b) if necessary
14 to enforce his other rights and remedies under this chapter, remove the goods from
15 the real estate, free and clear of all conflicting interests of all owners and
16 encumbrancers of the real estate, but he must reimburse any encumbrancer or owner
17 of the real estate who is not the lessee and who has not otherwise agreed for the cost
18 of repair of any physical injury, but not for any diminution in value of the real estate
19 caused by the absence of the goods removed or by any necessity of replacing them.
20 A person entitled to reimbursement may refuse permission to remove until the party
21 seeking removal gives adequate security for the performance of this obligation.

22 Section 12. That § 57A-4-210 be amended to read as follows:

23 57A-4-210. (a) A collecting bank has a security interest in an item and any accompanying
24 documents or the proceeds of either:

25 (1) In case of an item deposited in an account, to the extent to which credit given for the

1 item has been withdrawn or applied;

2 (2) In case of an item for which it has given credit available for withdrawal as of right, to
3 the extent of the credit given, whether or not the credit is drawn upon or there is a
4 right of charge-back; or

5 (3) If it makes an advance on or against the item.

6 (b) If credit given for several items received at one time or pursuant to a single agreement
7 is withdrawn or applied in part, the security interest remains upon all the items, any
8 accompanying documents or the proceeds of either. For the purpose of this section, credits first
9 given are first withdrawn.

10 (c) Receipt by a collecting bank of a final settlement for an item is a realization on its security
11 interest in the item, accompanying documents, and proceeds. So long as the bank does not
12 receive final settlement for the item or give up possession of the item or accompanying
13 documents for purposes other than collection, the security interest continues to that extent and
14 is subject to chapter 57A-9, but:

15 (1) No security agreement is necessary to make the security interest enforceable
16 (~~§ 57A-9-203(1)(a)~~) (Section 9-203(b)(3)(A));

17 (2) No filing is required to perfect the security interest; and

18 (3) The security interest has priority over conflicting perfected security interests in the
19 item, accompanying documents, or proceeds.

20 Section 13. That chapter 57A-5 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Section 5-118. (a) An issuer or nominated person has a security interest in a document
23 presented under a letter of credit to the extent that the issuer or nominated person honors or
24 gives value for the presentation.

25 (b) So long as and to the extent that an issuer or nominated person has not been reimbursed

or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Article 9, but:

- (1) a security agreement is not necessary to make the security interest enforceable under Section 9-203(b)(3);
- (2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and
- (3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

Section 14. That § 57A-7-503 be amended to read as follows:

57A-7-503.

- (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:
 - (a) Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (§ 57A-7-403) or with power of disposition under this title (§ 57A-2-403 and ~~57A-9-307~~ Section 9-320) or other statute or rule of law; nor
 - (b) Acquiesced in the procurement by the bailor or his nominee of any document of title.
- (2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods

1 has been duly negotiated. Such a title may be defeated under § 57A-7-504 to the same
2 extent as the rights of the issuer or a transferee from the issuer.

3 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to
4 the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated;
5 but delivery by the carrier in accordance with part 4 of this chapter pursuant to its
6 own bill of lading discharges the carrier's obligation to deliver.

7 Section 15. That § 57A-8-103 be amended to read as follows:

8 57A-8-103. In this chapter:

9 (a) A share or similar equity interest issued by a corporation, business trust, joint stock
10 company, or similar entity is a security.

11 (b) An "investment company security" is a security. "Investment company security"
12 means a share or similar equity interest issued by an entity that is registered as an
13 investment company under the federal investment company laws, an interest in a unit
14 investment trust that is so registered, or a face-amount certificate issued by a
15 face-amount certificate company that is so registered. Investment company security
16 does not include an insurance policy or endowment policy or annuity contract issued
17 by an insurance company.

18 (c) An interest in a partnership or limited liability company is not a security unless it is
19 dealt in or traded on securities exchanges or in securities markets, its terms expressly
20 provide that it is a security governed by this chapter, or it is an investment company
21 security. However, an interest in a partnership or limited liability company is a
22 financial asset if it is held in a securities account.

23 (d) A writing that is a security certificate is governed by this chapter and not by chapter
24 57A-3, even though it also meets the requirements of that chapter. However, a
25 negotiable instrument governed by chapter 57A-3 is a financial asset if it is held in a

1 securities account.

2 (e) An option or similar obligation issued by a clearing corporation to its participants is
3 not a security, but is a financial asset.

4 (f) A commodity contract, as defined in ~~§ 57A-9-115~~ Section 9-102(a)(15), is not a
5 security or a financial asset.

6 Section 16. That § 57A-8-106 be amended to read as follows:

7 57A-8-106. (a) A purchaser has "control" of a certificated security in bearer form if the
8 certificated security is delivered to the purchaser.

9 (b) A purchaser has "control" of a certificated security in registered form if the certificated
10 security is delivered to the purchaser, and:

11 (1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

12 (2) the certificate is registered in the name of the purchaser, upon original issue or
13 registration of transfer by the issuer.

14 (c) A purchaser has "control" of an uncertificated security if:

15 (1) the uncertificated security is delivered to the purchaser; or

16 (2) the issuer has agreed that it will comply with instructions originated by the purchaser
17 without further consent by the registered owner.

18 (d) A purchaser has "control" of a security entitlement if:

19 (1) the purchaser becomes the entitlement holder; or

20 (2) the securities intermediary has agreed that it will comply with entitlement orders
21 originated by the purchaser without further consent by the entitlement holder; or

22 (3) another person has control of the security entitlement on behalf of the purchaser or,
23 having previously acquired control of the security entitlement, acknowledges that it
24 has control on behalf of the purchaser.

25 (e) If an interest in a security entitlement is granted by the entitlement holder to the

entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection(c)(2) or (d)(2) has control, even if the registered owner in the case of subsection (c)(2) or the entitlement holder in the case of subsection (d)(2) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Section 17. That § 57A-8-110 be amended to read as follows:

57A-8-110. (a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

- (1) the validity of a security;
- (2) the rights and duties of the issuer with respect to registration of transfer;
- (3) the effectiveness of registration of transfer by the issuer;
- (4) whether the issuer owes any duties to an adverse claimant to a security; and
- (5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

- (1) acquisition of a security entitlement from the securities intermediary;
- (2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

- (1) If an agreement between the securities intermediary and its entitlement holder ~~specifies that it is governed by the law of a particular jurisdiction governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this Act,~~ that jurisdiction is the securities intermediary's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the

1 securities intermediary's jurisdiction.

2 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the
3 securities intermediary and its entitlement holder ~~does not specify the governing law~~
4 ~~as provided in paragraph (1), but~~ governing the securities account expressly ~~specifies~~
5 provides that the securities account is maintained at an office in a particular
6 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

7 ~~(3)(4)~~ If an agreement between the securities intermediary and its entitlement holder does
8 ~~not specify a jurisdiction as provided in paragraph (1) or (2)~~ none of the preceding
9 paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which
10 ~~is located~~ the office identified in an account statement as the office serving the
11 entitlement holder's account is located.

12 ~~(4)(5)~~ If an agreement between the securities intermediary and its entitlement holder does
13 ~~not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement~~
14 ~~does not identify an office serving the entitlement holder's account as provided in~~
15 ~~paragraph (3)~~ none of the preceding paragraphs applies, the securities intermediary's
16 jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the
17 securities intermediary is located.

18 (f) A securities intermediary's jurisdiction is not determined by the physical location of
19 certificates representing financial assets, or by the jurisdiction in which is organized the issuer
20 of the financial asset with respect to which an entitlement holder has a security entitlement, or
21 by the location of facilities for data processing or other record keeping concerning the account.

22 Section 18. That § 57A-8-301 be amended to read as follows:

23 57A-8-301. (a) Delivery of a certificated security to a purchaser occurs when:

24 (1) the purchaser acquires possession of the security certificate;

25 (2) another person, other than a securities intermediary, either acquires possession of the

1 security certificate on behalf of the purchaser or, having previously acquired
2 possession of the certificate, acknowledges that it holds for the purchaser; or

3 (3) a securities intermediary acting on behalf of the purchaser acquires possession of the
4 security certificate, only if the certificate is in registered form and ~~has been~~ is (i)
5 registered in the name of the purchaser, (ii) payable to the order of the purchaser, or
6 (iii) specially indorsed to the purchaser by an effective indorsement and has not been
7 indorsed to the securities intermediary or in blank.

8 (b) Delivery of an uncertificated security to a purchaser occurs when:

9 (1) the issuer registers the purchaser as the registered owner, upon original issue or
10 registration of transfer; or

11 (2) another person, other than a securities intermediary, either becomes the registered
12 owner of the uncertificated security on behalf of the purchaser or, having previously
13 become the registered owner, acknowledges that it holds for the purchaser.

14 Section 19. That § 57A-8-302 be amended to read as follows:

15 57A-8-302.

16 (a) Except as otherwise provided in subsections (b) and (c), ~~upon delivery a purchaser~~
17 ~~of a certificated or uncertificated security to a purchaser, the purchaser~~ a purchaser acquires all
18 rights in the security that the transferor had or had power to transfer.

19 (b) A purchaser of a limited interest acquires rights only to the extent of the interest
20 purchased.

21 (c) A purchaser of a certificated security who as a previous holder had notice of an
22 adverse claim does not improve its position by taking from a protected purchaser.

23 Section 20. That § 57A-8-510 be amended to read as follows:

24 57A-8-510.

25 (a) ~~An~~ In a case not covered by the priority rules in Article 9 or the rules stated in

1 subsection (c), an action based on an adverse claim to a financial asset or security
2 entitlement, whether framed in conversion, replevin, constructive trust, equitable lien,
3 or other theory, may not be asserted against a person who purchases a security
4 entitlement, or an interest therein, from an entitlement holder if the purchaser gives
5 value, does not have notice of the adverse claim, and obtains control.

6 (b) If an adverse claim could not have been asserted against an entitlement holder under
7 § 57A-8-502, the adverse claim cannot be asserted against a person who purchases
8 a security entitlement, or an interest therein, from the entitlement holder.

9 (c) In a case not covered by the priority rules in chapter 57A-9, a purchaser for value of
10 a security entitlement, or an interest therein, who obtains control has priority over a
11 purchaser of a security entitlement, or an interest therein, who does not obtain
12 control. ~~Purchasers~~ Except as otherwise provided in subsection(d), purchasers who
13 have control rank ~~equally, except that a~~ according to priority in time of:

14 (1) the purchaser's becoming the person for whom the securities account, in which the
15 security entitlement is carried, is maintained, if the purchaser obtained control under
16 Section 8-106(d)(1);

17 (2) the securities intermediary's agreement to comply with the purchaser's entitlement
18 orders with respect to security entitlements carried or to be carried in the securities
19 account in which the security entitlement is carried, if the purchaser obtained control
20 under Section 8-106(d)(2); or

21 (3) if the purchaser obtained control through another person under Section 8-106(d)(3),
22 the time on which priority would be based under this subsection if the other person
23 were the secured party.

24 (d) A securities intermediary as purchaser has priority over a conflicting purchaser who has
25 control unless otherwise agreed by the securities intermediary.